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P. Lanne
Maxwellton.
The longest day. 1895.

SIR JAMES FITZJAMES STEPHEN

Walker & Boutall Photo.

J. Stephen

From a drawing by G. F. Watts, R.A. 1863.

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THE LIFE

OF

SIR JAMES FITZJAMES STEPHEN

BART., K.C.S.I.

A JUDGE OF THE HIGH COURT OF JUSTICE

BY HIS BROTHER

LESLIE STEPHEN

LONDON
SMITH, ELDER, & CO., 15 WATERLOO PLACE
1895

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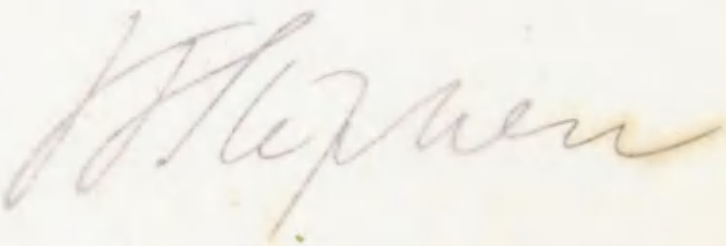

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WITH TWO PORTRAITS

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PREFACE

In writing the following pages I have felt very strongly one disqualification for my task. The life of my brother, Sir J. F. Stephen, was chiefly devoted to work which requires some legal knowledge for its full appreciation. I am no lawyer; and I should have considered this fact to be a sufficient reason for silence, had it been essential to give any adequate estimate of the labours in question. My purpose, however, is a different one. I have wished to describe the man rather than to give any history of what he did. What I have said of the value of his performances must be taken as mainly a judgment at second hand. But in writing of the man himself I have advantages which, from the nature of the case, are not shared by others. For more than sixty years he was my elder brother; and a brother in whose character and fortunes I took the strongest interest from the earliest period at which I was capable of reflection or observation. I think that brothers have generally certain analogies of temperament, intellectual and moral, which enable them, however widely they may differ in many respects, to place themselves at each other's point of view, and to be so far

capable of that sympathetic appreciation which is essential to satisfactory biography. I believe that this is true of my brother and myself. Moreover, as we were brought up under the same roof, I have an intimate knowledge —now, alas! almost peculiar to myself—of the little home circle whose characteristics had a profound influence upon his development. I have thought it desirable to give a fuller account of those characteristics, and of their origin in previous circumstances, than can well be given by any one but myself. This is partly because I recognise the importance of the influence exerted upon him; and partly, I will admit, for another reason. My brother took a great interest, and, I may add, an interest not unmixed with pride, in our little family history. I confess that I share his feelings, and think, at any rate, that two or three of the persons of whom I have spoken deserve a fuller notice than has as yet been made public. What I have said may, I hope, serve as a small contribution to the history of one of the rivulets which helped to compose the great current of national life in the earlier part of this century.

I could not have attempted to write the life of my brother without the approval and the help of my sister-in-law, Lady Stephen. She has provided me with materials essential to the narrative, and has kindly read what I have written. I am, of course, entirely responsible for everything that is here said; and I feel the responsibility all the more because I have had the advantage of her suggestions throughout. I have also to thank my brother's children, who have been in various ways very helpful. My nephews, in particular, have helped me in regard to various legal matters. To

my sister, Miss Stephen, I owe a debt of gratitude which —for reasons which she will understand—I shall not attempt to discharge by any full acknowledgment.

I have especially to thank Sir H. S. Cunningham and Lady Egerton, Lady Stephen's brother and sister, for permitting me to read my brother's letters to them, and for various suggestions. Some other correspondence has been placed in my hands, and especially two important collections. Lady Grant Duff has been good enough to show me a number of letters written to her, and Lady Lytton has communicated letters written to the late Lord Lytton. I have spoken of these letters in the text, and have in the last chapter given my reasons for confining my use of them to occasional extracts. They have been of material service.

I have acknowledged help received from other persons at the points where it has been turned to account. I will, however, offer my best thanks to them in this place, and assure them of my sincere gratitude. Mr. Arthur Coleridge, the Rev. Dr. Kitchin, dean of Durham, the Rev. H. W. Watson, rector of Berkeswell, Coventry, the Rev. J. Llewelyn Davies, vicar of Kirkby Lonsdale, Prof. Sidgwick and Mr. Montagu S. D. Butler, of Pembroke College, Cambridge, have given me information in regard to early years. Mr. Franklin Lushington, Mr. Justice Wills, Lord Field, Mr. Justice Vaughan Williams, Sir Francis Jeune, Sir Theodore Martin, the Right Hon. Joseph Chamberlain, Mr. H. F. Dickens, and the late Captain Parker Snow have given me information of various kinds as to the legal career. Sir John Strachey, Sir Robert Egerton, and

Sir H. S. Cunningham have given me information as to the Indian career. Mr. George Murray Smith, Mr. James Knowles, Mr. Frederick Greenwood, and Mr. Longman have given me information as to various literary matters. I have also to thank Mrs. Charles Simpson, Mr. F. W. Gibbs, Mrs. Russell Gurney, Mr. Horace Smith, Sir F. Pollock, Prof. Maitland, Mr. Voysey, and Mr. A. H. Millar, of Dundee, for help on various points.

LESLIE STEPHEN.

1 MAY, 1895.

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LIFE

OF

SIR JAMES FITZJAMES STEPHEN

CHAPTER I

FAMILY HISTORY

I. JAMES STEPHEN, WRITER ON IMPRISONMENT FOR DEBT

During the first half of the eighteenth century a James Stephen, the first of the family of whom I have any knowledge, was tenant of a small farm in Aberdeenshire, on the borders of Buchan.[1] He was also engaged in trade, and, though it is stated that smuggler would be too harsh a name to apply to him, he had no insuperable objection to dealing in contraband articles. He was considered to belong to the respectable class, and gave his sons a good education. He had nine children by his wife, Mary Brown. Seven of these were sons, and were said to

[1] I learn by the courtesy of Mr. James Young Stephen that this James Stephen was son of a previous James Stephen of Ardenbraught, whose brother Thomas was provost of Dundee and died in 1728. James Stephen of Ardenbraught had a younger son John, who was great-grandfather of the present Mr. Oscar Leslie Stephen. Mr. O. L. Stephen is father of Mr. James Young Stephen, Mr. Oscar Leslie Stephen, junior, and Sir Alexander Condie Stephen, K.C.M.G.

be the finest young men in the country. Alexander, the eldest, was in business at Glasgow; he died when nearly seventy, after falling into distress. William, the second son, studied medicine, and ultimately settled at St. Christopher's, in the West Indies, where he was both a physician and a planter. He probably began life as a 'surgeon to a Guineaman,' and he afterwards made money by buying 'refuse' (that is, sickly) negroes from slave ships, and, after curing them of their diseases, selling them at an advanced price. He engaged in various speculations, and had made money when he died in 1781, in his fiftieth year. His career, as will be seen, was of great importance to his relations. The other sons all took to trade, but all died before William. The two sisters, Mrs. Nuccoll and Mrs. Calder, married respectably, and lived to a great age. They were able to be of some service to nephews and nieces.

My story is chiefly concerned with the third son, James, born about 1733. After studying law for a short time at Aberdeen, he was sent abroad, when eighteen years old, to Holland, and afterwards to France, with a view to some mercantile business. He was six feet three inches in height, and a man of great muscular power. Family traditions tell of his being attacked by two footpads, and knocking their heads together till they cried for mercy. Another legend asserts that when a friend offered him a pony to carry him home after dinner, he made and won a bet that he would carry the pony. In the year 1752 this young giant was sailing as supercargo of a ship bound from Bordeaux to Scotland, with wine destined, no doubt, to replenish the 'blessed bear of Bradwardine,' and its like. The ship had neared the race of Portland, when a storm arose, and she was driven upon the cliffs of Purbeck Island. James Stephen, with four of the crew,

escaped to the rocks, the rest being drowned. Stephen roped his companions to himself, and scaled the rocks in the dark, as Lovel, in the 'Antiquary,' leads the Wardours and Edie Ochiltree up the crags of the Halket Head. Next day, the outcasts were hospitably received by Mr. Milner, Collector of Customs at Poole. Stephen had to remain for some time on the spot to look after the salvage of the cargo. The drowned captain had left some valuable papers in a chest. He appeared in a dream to Stephen, and gave information which led to their recovery. The news that his ghost was on the look-out had, it is said, a wholesome effect in deterring wreckers from interference with the cargo.

Mr. Milner had six children, the youngest of whom, Sibella, was a lovely girl of fifteen. She had a fine voice, and had received more than the usual education of the times. She fell in love with the gallant young stranger, and before long they were privately married. This event was hastened by their desire to anticipate the passage of the Marriage Act (June 1753), which was expected to make the consent of parents necessary. The poor girl, however, yielded with much compunction, and regarded the evils which afterwards befell her as providential punishments for her neglect of filial duty.

James Stephen was a man of many prepossessing qualities, and soon became reconciled to his wife's family. He was taken into partnership by one of his brothers-in-law, a William Milner, then a merchant at Poole. Here his two eldest children were born, William on October 27, 1756, and James on June 30, 1758. Unfortunately the firm became bankrupt; and the bankruptcy led to a lifelong quarrel between James Stephen and his elder brother, William, who had taken some share in the business. James then managed to start in business in

London, and for some time was fairly prosperous. Unluckily, while at Poole he had made a great impression upon Sir John Webbe, a Roman Catholic baronet, who had large estates in the neighbourhood. Sir John had taken up a grand scheme for developing his property at Hamworthy, close to Poole. Stephen, it seems, had discovered that there were not only brick earth and pipeclay but mineral springs and coal under the barren soil. A town was to be built; a trade started with London; Sir John's timber was to be turned into ships; a colliery was to be opened —and, in short, a second Bristol was to arise in Dorsetshire. Sir John was to supply the funds, and Stephen's energy and ability marked him out as the heaven-sent manager. Stephen accepted the proposals, gave up his London business, and set to work with energy. Coal was found, it is said, 'though of too sulphureous a kind for use;' but deeper diggings would, no doubt, lay bare a superior seam. After a year or two, however, affairs began to look black; Sir John Webbe became cool and then fell out with his manager; and the result was that, about 1769, James Stephen found himself confined for debt in the King's Bench prison.[1]

Stephen, however, was not a man to submit without knowing the reason why. He rubbed up his old legal knowledge, looked into the law-books, and discovered that imprisonment for debt was contrary to Magna Charta. This doctrine soon made converts in the King's Bench. Three of his fellow prisoners enjoy such immortality as is conferred by admission to biographical dictionaries. The best known was the crazy poet, Christopher Smart, famous

[1] My friend, Professor Bonney, kindly refers me to Conybeare and Philips' *Outlines of Geology of England and Wales*, p. 13, where there is an account of certain beds of lignite, or imperfect coal, in the neighbourhood of Poole. They burn with an odour of bitumen, and, no doubt, misled my great-grandfather. Geology was not even outlined in those days.

for having leased himself for ninety-nine years to a bookseller, and for the fine 'Song of David,' which Browning made the text of one of his later poems.[1] Another was William Jackson, an Irish clergyman, afterwards known as a journalist on the popular side, who was convicted of high treason at Dublin in 1795, and poisoned himself in the dock.[2] A third was William Thompson, known as 'Blarney,' a painter, who had married a rich wife in 1767, but had apparently spent her money by this time.[3] Mrs. Stephen condescended to enliven the little society by her musical talents. The prisoners in general welcomed Stephen as a champion of liberty. A writ of 'Habeas Corpus' was obtained, and Stephen argued his case before Lord Mansfield. The great lawyer was naturally less amenable to reason than the prisoners. He was, however, impressed, it is reported, by the manliness and energy of the applicant. 'It is a great pity,' he said, 'but the prisoner must be remanded.' James Stephen's son, James, a boy of twelve, was by his side in court, and a bystander slipped five shillings into his hand; but the father had to go back to his prison. He stuck to his point obstinately. He published a pamphlet, setting forth his case. He wrote letters to the 'Public Advertiser,' to which Junius was then contributing. He again appealed to the courts, and finally called a meeting of his fellow prisoners. They resolved to break out in a body, and march to Westminster, to remonstrate with the judges. Stephen seized a turnkey, and took the keys by force; but, finding his followers unruly, was wise enough to submit. He was sent with three others to the 'New Jail.' The prisoners in the King's Bench hereupon rose,

[1] 'Parleyings with Certain People'—*Works* (1889) xvi. 148–160.
[2] See *Dictionary of National Biography*.
[3] Redgrave's *Dictionary of Painters*.

and attacked the wall with a pickaxe. Soldiers were called in, and the riot finally suppressed.[1]

Stephen, in spite of these proceedings, was treated with great humanity at the 'New Jail;' and apparently without much severity at the King's Bench to which he presently returned. 'Blarney' Thompson painted his portrait, and I possess an engraving with the inscription, 'Veritas à quocunque dicitur à Deo est.' Not long ago a copy of this engraving was given to my brother by a friend who had seen it in a shop and recognised the very strong family likeness between James and his great-grandson, James Fitzjames.

Stephen soon got out of prison. Sir John Webbe, at whose suit he had been arrested, agreed to pay the debts, gave him 500*l.* and settled an annuity of 40*l.* upon Mrs. Stephen. I hope that I may infer that Sir John felt that his debtor had something to say for himself. The question of making a living, however, became pressing. Stephen, on the strength, I presume, of his legal studies, resolved to be called to the bar. He entered at the Middle Temple; but had scarcely begun to keep his terms when the authorities interfered. His letters to the papers and attacks upon Lord Mansfield at the very time when Junius was at the height of his power (I do not, I may observe, claim the authorship of the letters for James Stephen) had, no doubt, made him a suspicious character. The benchers accord-

[1] I have copies of two pamphlets in which these proceedings are described:—One is entitled 'Considerations on Imprisonment for Debt, fully proving that the confining of the bodies of debtors is contrary to Common Law, Magna Charta, Statute Law, Justice, Humanity, and Policy; and that the practice is more cruel and oppressive than is used in the most arbitrary kingdoms in Europe, with an account of various applications, &c.; by James Stephen, 1770.' The other pamphlet, to which is prefixed a letter by W. Jackson, reprints some of Stephen's letters from the New Jail, wants a title and is imperfect. See also the *Annual Register* for 1770 (Chronicle), November 19, for 1771 (Chronicle), January 31.

ingly informed him that they would not call him to the bar, giving as their reasons his 'want of birth, want of fortune, want of education, and want of temper.' His friend, William Jackson, hereupon printed a letter,[1] addressing the benchers in the true Junius style. He contrasts Stephen with his persecutors. Stephen might not know Law Latin, but he had read Bracton and Glanville and Coke; he knew French and had read Latin at Aberdeen; he had been educated, it was true, in some 'paltry principles of honour and honesty,' while the benchers had learnt 'more useful lessons;' he had written letters to Wilkes copied in all the papers; he had read Locke, could 'harangue for hours upon social feelings, friendship, and benevolence,' and would trudge miles to save a family from prison, not considering that he was thereby robbing the lawyers and jailors of their fees. The benchers, it seems, had sworn the peace against him before Sir John Fielding, because he had made a friendly call upon a member of the society. They mistook a card of introduction for a challenge. Jackson signs himself 'with the profoundest sense of your Masterships' demerits, your Masterships' inflexible detestor,' and probably did not improve his friend's position.

Stephen, thus rejected, entered the legal profession by a back door, which, if not reputable, was not absolutely closed. He entered into a kind of partnership with a solicitor who was the ostensible manager of the business, and could be put forward when personal appearance was necessary. Stephen's imposing looks and manner, his acquaintance with commercial circles and his reputation as a victim of Mansfield brought him a certain amount of

[1] That mentioned in the previous note. See also the 'Chronicle' of the *Annual Register* for November 19, 1770, and January 31 and November 2, 1771.

business. He had, however, to undertake such business as did not commend itself to the reputable members of the profession. He had a hard struggle and was playing a losing game. He became allied with unfortunate adventurers prosecuting obscure claims against Government, which, even when admitted, did not repay the costs incurred. He had to frequent taverns in order to meet his clients, and took to smoking tobacco and possibly to other indulgences. His wife, who was a delicate woman, was put to grievous shifts to make both ends meet. Her health broke down, and she died at last on March 21, 1775. She had brought him six children, of whom the eldest was nineteen and the youngest still under four.[1] I shall speak directly of the two eldest. Two daughters were taken in charge by their grandmother Stephen, who was still living in Scotland; while the two little ones remained with their father at Stoke Newington, where he now lived, ran about the common and learnt to ride pigs. James Stephen himself lived four years more, sinking into deeper difficulties; an execution was threatened during his last illness, and he died in 1779, leaving hardly enough to pay his debts.[2]

II. JAMES STEPHEN, MASTER IN CHANCERY

I have now to tell the story of the second son, James, my grandfather, born in 1758. His education, as may be anticipated, was desultory. When four or five years old, he was sent to a school at Vauxhall kept by Peter Annet (1693–1769), the last of the Deists who (in 1763) was

[1] The children were William and James (already mentioned); Sibella, born about 1765, afterwards married to William Maxwell Morison, editor of *Decisions of Court of Session* (1801–1818); Hannah, born about 1767, afterwards married to William Farish (1759–1837), Jacksonian professor at Cambridge; Elizabeth, born about 1769, afterwards married to her cousin, William Milner, of Comberton, near Cambridge; and John, born about 1771.

[2] The parish register records his burial on September 9, 1779.

imprisoned for a blasphemous libel. The elder Stephen was then living at Lambeth, and the choice of a schoolmaster seems to show that his opinions were of the free-thinking type. About 1767 the boy was sent to a school near his mother's family at Poole. There at the early age of ten he fell desperately in love with his schoolmaster's daughter, aged fifteen, and was hurt by the levity with which his passion was treated. At the same period he became a poet, composed hymns, and wrote an epigram upon one of his father's creditors. He accompanied his father to the King's Bench Prison, and there Christopher Smart and others petted the lad, lent him books, and encouraged his literary aspirations. During his father's later troubles he managed to keep up a subscription to a circulating library and would read two volumes a day, chiefly plays and novels, and, above all, the 'Grand Cyrus' and other old-fashioned romances. His mother tried to direct him to such solid works as Rapin's History, and he learnt her favourite Young's 'Night Thoughts' by heart. He had no schooling after leaving Poole, until, about 1772, he was sent to a day school on Kennington Green, kept by a cheesemonger who had failed in business, and whose sole qualifications for teaching were a clerical wig and a black coat. Here occurred events which profoundly affected his career. A schoolfellow named Thomas Stent, son of a stockbroker, became his warm friend. The parent Stents forbade the intimacy with the son of a broken merchant. Young Stephen boldly called upon Mrs. Stent to protest against the sentence. She took a liking to the lad and invited him to her house, where the precocious youth fell desperately in love with Anne Stent, his schoolfellow's sister, who was four months his senior. The attachment was discovered and treated with ridicule. The girl, however, returned the boy's

affection and the passion ran its course after the most approved fashion. The hero was forbidden the house and the heroine confined to her room. There were clandestine meetings and clandestine correspondence, in which the schoolboy found the advantage of his studies in the 'Grand Cyrus.' At last in 1773 the affair was broken off for the time by the despatch of James Stephen to Winchester, where one of his Milner uncles boarded him and sent him to the school. His want of preparation prevented him from profiting by the teaching, and after the first half year his parents' inability to pay the bills prevented him from returning. He wrote again to Miss Stent, but received a cold reply, signifying her obedience to parental authority. For the next two years he learnt nothing except from his studies at the circulating library. His mother, sinking under her burthens, did what she could to direct him, and he repaid her care by the tenderest devotion. Upon her death he thought for a moment of suicide. Things were looking black indeed. His elder brother William now took a bold step. His uncle and godfather, William, who had quarrelled with the family after the early bankruptcy at Poole, was understood to be prospering at St. Christopher's. The younger William, who had been employed in a mercantile office, managed to beg a passage to the West Indies, and threw himself upon the uncle's protection. The uncle received the boy kindly, promised to take him into partnership as a physician, and sent him back by the same ship in order to obtain the necessary medical training at Aberdeen. He returned just in time. James had been thinking of volunteering under Washington, and had then accepted the offer of a 'book-keeper's' place in Jamaica. He afterwards discovered that a 'book-keeper' was an intermediate between the black slave-driver and the white overseer, and was doomed to a

miserable and degrading life. It was now settled that he should go with William to Aberdeen, and study law. He entered at Lincoln's Inn, and looked forward to practising at St. Christopher's. The uncle refused to extend his liberality to James; but a student could live at Aberdeen for 20*l.* a year; the funds were somehow scraped together; and for the next two sessions, 1775–76 and 1776–77, James was a student at the Marischal College. The town, he says, was filthy and unwholesome; but his Scottish cousins were cordial and hospitable, the professors were kindly; and though his ignorance of Latin and inability even to read the Greek alphabet were hindrances, he picked up a little mathematics and heard the lectures of the great Dr. Beattie. His powers of talk and his knowledge of London life atoned for his imperfect education. He saw something of Aberdeen society; admired and danced with the daughters of baillies, and was even tempted at times to forget his passion for Anne Stent, who had sent a chilling answer to a final appeal.

In 1777, Stephen returned to London, and had to take part of his father's dwindling business. He thus picked up some scraps of professional knowledge. On the father's death, kind Scottish relations took charge of the two youngest children, and his brother William soon sailed for St. Christopher's. James was left alone. He appealed to the uncle, George Milner, with whom he had lived at Winchester, and who, having married a rich wife, was living in comfort at Comberton, near Cambridge. The uncle promised to give him 50*l.* a year to enable him to finish his legal education. He took lodgings on the strength of this promise, and resolved to struggle on, though still giving an occasional thought to Washington's army.

Isolation and want of money naturally turn the

thoughts of an energetic young man to marriage. James Stephen resolved once more to appeal to Anne Stent. Her father's doors were closed to him; but after long watching he managed to encounter her as she was walking. He declared his unaltered passion, and she listened with apparent sympathy. She showed a reserve, however, which was presently explained. In obedience to her parents' wishes, she had promised to marry a young man who was on his return from the colonies. The avowal led to a pathetic scene: Anne Stent wept and fainted, and finally her feelings became so clear that the couple pledged themselves to each other; and the young gentleman from the colonies was rejected. Mr. Stent was indignant, and sent his daughter to live elsewhere.

The young couple, however, were not forbidden to meet, and found an ally in James Stephen's former schoolfellow, Thomas Stent. He was now a midshipman in the royal navy; and he managed to arrange meetings between his sister and her lover. Stent soon had to go to sea, but suggested an ingenious arrangement for the future. A lovely girl, spoken of as Maria, was known to both the Stents and passionately admired by the sailor. She lived in a boarding-house, and Stent proposed that Stephen should lodge in the same house, where he would be able both to see Anne Stent and to plead his friend's cause with Maria. This judicious scheme led to difficulties. When, after a time, Stephen began to speak to Maria on behalf of Stent, the lady at last hinted that she had another attachment, and, on further pressure, it appeared that the object of the attachment was Stephen himself. He was not insensible, as he then discovered, to Maria's charms. 'I have been told,' he says, 'that no man can love two women at once; but I am confident that this is an error.'

The problem, however, remained as to the application of this principle to practice. The first consequence was a breach with the old love. Miss Stent and her lover were parted. Maria, however, was still under age, and Stephen was under the erroneous impression that a marriage with her would be illegal without the consent of her guardians, which was out of the question. While things were in this state, Thomas Stent came back from a cruise covered with glory. He hastened at once from Portsmouth to his father, and persuaded the delighted old gentleman to restore his daughter to her home and to receive James Stephen to the house as her acknowledged suitor. He then sent news of his achievement to his friend; and an interview became necessary, to which James Stephen repaired about as cheerfully, he says, as he would have gone to Tyburn tree. He had to confess that he had broken off the engagement to his friend's sister because he had transferred his affections to his friend's mistress. Stent must have been a magnanimous man. He replied, after reflection, that the news would break his father's heart. The arrangement he had made must be ostensibly carried out. Stephen must come to the elder Stent's house and meet the daughter on apparently cordial terms. Young Stent's friendship was at an end; but Stephen felt bound to adopt the prescribed plan.

Meanwhile Stephen's finances were at a low ebb. His uncle, Milner, had heard a false report, that the nephew had misrepresented the amount of his father's debts. He declined to pay the promised allowance, and Stephen felt the insult so bitterly that, after disproving the story, he refused to take a penny from his uncle. He was once reduced to his last sixpence, and was only kept afloat by accepting small loans, amounting to about 5*l.*, from an old clerk of his father's. At last, towards the end of 1780 a

chance offered. The 'fighting parson,' Bate, afterwards Sir Henry Bate Dudley, then a part proprietor of the 'Morning Post,' quarrelled with a fellow proprietor, Joseph Richardson, put a bullet into his adversary's shoulder and set up a rival paper, the 'Morning Herald.' A vacancy was thus created in the 'Morning Post,' and Richardson gave the place to Stephen, with a salary of two guineas a week. Stephen had to report debates on the old system, when paper and pen were still forbidden in the gallery. At the trial of Lord George Gordon (February 5 and 6, 1781) he had to be in Westminster Hall at four in the morning; and to stand wedged in the crowd till an early hour the next morning,[1] when the verdict was delivered. He had then to write his report while the press was at work. The reporters were employed at other times upon miscellaneous articles; and Stephen acquired some knowledge of journalism and of the queer world in which journalists then lived. They were a rough set of Bohemians, drinking, quarrelling, and duelling, and indulging in coarse amusements. Fortunately Stephen's attendance upon the two ladies, for he still saw something of both, kept him from joining in some of his fellows' amusements.

In 1781 there came a prospect of relief. The uncle in St. Christopher's died and left all his property to his nephew William. William at once sent home supplies, which enabled his brother James to give up reporting, to be called to the bar (January 26, 1782) and in the next year to sail to St. Christopher's. His love affair had unravelled itself. He had been suspended between the two ladies, and only able to decide that if either of them married he was bound to marry the other. Miss Stent

[1] See the trial reported by Gurney in 21 *State Trials*, pp. 486–651. It lasted from 8 A.M. on Monday till 5.15 A.M. on Tuesday morning.

seems to have been the superior of Maria in intellect and accomplishments, though inferior in beauty. She undoubtedly showed remarkable forbearance and good feeling. Ultimately she married James Stephen before he sailed for the West Indies. Maria not long afterwards married someone else, and, to the best of my belief, lived happily ever afterwards.

My grandfather's autobiography, written about forty years later, comes to an end at this point. It is a curious document, full of the strong religious sentiment by which he came to be distinguished; tracing the finger of Providence in all that happened to him, even in the good results brought out of actions for which he expresses contrition; and yet with an obvious pleasure in recalling the vivid impressions of his early and vigorous youth. I omit parts of what is at times a confession of error. This much I think it only right to say. Although he was guilty of some lapses from strict morality, for which he expresses sincere regret, it is also true that, in spite of his surroundings and the temptations to which a very young man thrown upon the London world of those days was exposed, he not only showed remarkable energy and independence and a strong sense of honour, but was to all appearance entirely free from degrading vices. His mother's influence seems to have impressed upon him a relatively high standard of morality, though he was a man of impetuous and ardent character, turned loose in anything but a pure moral atmosphere.

James Stephen had at this time democratic tendencies. He had sympathised with the rebellious colonists, and he had once covered himself with glory by a speech against slavery delivered in Coachmakers' Hall in presence of Maria and Miss Stent. He had then got up the subject for the occasion. He was now to make practical ac-

quaintance with it. His ship touched at Barbadoes in December 1783; and out of curiosity he attended a trial for murder. Four squalid negroes, their hands tied by cords, were placed at the bar. A planter had been found dead with injuries to his head. A negro girl swore that she had seen them inflicted by the four prisoners. There was no jury, and the witnesses were warned in 'the most alarming terms' to conceal nothing that made against the accused. Stephen, disgusted by the whole scene, was glad to leave the court. He learnt afterwards that the prisoners were convicted upon the unsupported evidence of the girl. The owner of two of them afterwards proved an *alibi* conclusively, and they were pardoned; but the other two, convicted on precisely the same evidence, were burnt alive.[1] Stephen resolved never to have any connection with slavery. During his stay at St. Christopher's he had free servants, or, if he hired slaves, obtained their manumission. No one who had served him long remained in slavery, except one man, who was so good and faithful a servant that his owner refused to take even the full value when offered by his employer.[2] Other facts strengthened his hatred of the system. In 1786 he was engaged in prosecuting a planter for gross cruelty to two little negroes of 6 and 7 years of age. After long proceedings, the planter was fined 40*s*.

A lawyer's practice at St. Christopher's was supposed to be profitable. The sugar colonies were flourishing; and Nelson, then captain of the 'Boreas,' was giving proof of his character, and making work for the lawyers by enforcing the provisions of the Navigation Act upon recalcitrant American traders and their customers.

[1] See *Slavery Delineated* (preface to vol. i.), where other revolting details are given.

[2] *Slavery Delineated*, i. 54, 55.

Stephen earned enough to be able to visit England in the winter of 1788–9. There he sought the acquaintance of Wilberforce, who was beginning his crusade against the slave trade. Information from a shrewd observer on the spot was, of course, of great value; and, although prudence forbade a public advocacy of the cause, Stephen supplied Wilberforce with facts and continued to correspond with him after returning to St. Christopher's. The outbreak of the great war brought business. During 1793–4 the harbour of St. Christopher's was crowded with American prizes, and Stephen was employed to defend most of them in the courts. His health suffered from the climate, and he now saved enough to return to England at the end of 1794. He then obtained employment in the Prize Appeal Court of the Privy Council, generally known as the 'Cockpit.' He divided the leading business with Dallas until his appointment to a Mastership in Chancery in 1811.

Stephen was now able to avow his anti-slavery principles and soon became one of Wilberforce's most trusted supporters. He was probably second only to Zachary Macaulay, who had also practical experience of the system. Stephen's wife died soon after his return, and was buried at Stoke Newington on December 10, 1796. He was thrown for a time into the deepest dejection. Wilberforce forced himself upon his solitude, and with the consolations of so dear a friend his spirits recovered their elasticity. Four years later the friendship was drawn still closer by Stephen's marriage to the only surviving sister of Wilberforce, widow of the Rev. Dr. Clarke, of Hull. She was a rather eccentric but very vigorous woman. She spent all her income, some 300*l.* or 400*l.* a year, on charity, reserving 10*l.* for her clothes She was often to be seen parading Clapham in rags and

tatters. Thomas Gisborne, a light of the sect, once tore her skirt from top to bottom at his house, Yoxall Lodge, saying 'Now, Mrs. Stephen, you *must* buy a new dress.' She calmly stitched it together and appeared in it next day. She made her stepchildren read Butler's 'Analogy' before they were seven.[1] But in spite of her oddities and severities, she seems to have been both respected and beloved by her nearest relations.

The marriage probably marked Stephen's final adhesion to the Evangelical party. He maintained till his death the closest and most affectionate alliance with his brother-in-law Wilberforce. The nature of their relations may be inferred from Wilberforce's 'Life and Letters.' Wilberforce owed much of his influence to the singular sweetness of his disposition and the urbanity of his manners. His wide sympathies interested him in many causes, and even his antagonists were not enemies. Stephen, on the other hand, as Mr. Henry Adams says, was a 'high-minded fanatic.' To be interested in any but the great cause was to rouse his suspicions. 'If you,' he once wrote to Wilberforce, 'were Wellington, and I were Masséna, I should beat you by distracting your attention from the main point.' Any courtesies shown by Wilberforce to his opponents or to his old friend Pitt seemed to his ardent coadjutor to be concessions to the evil principle. The Continental war, he held, was a Divine punishment inflicted upon England for maintaining the slave trade; and he expounded this doctrine in various pamphlets, the first of which, 'The Crisis of the Sugar Colonies,' appeared in 1802.

Yet Stephen owes a small niche in history to another cause, upon which he bestowed no little energy. His professional practice had made him familiar with the course of the neutral trade. In October 1805, almost on

[1] Sir George Stephen's *Life of J. Stephen*, p. 29.

the day of the battle of Trafalgar, he published a pamphlet called 'War in Disguise.' The point of this, put very briefly, was to denounce a practice by which our operations against France and Spain were impeded. American ships, or ships protected by a fraudulent use of the American flag, sailed from the hostile colonies, ostensibly for an American port, and then made a nominally distinct but really continuous voyage to Europe. Thus the mother countries were still able to draw supplies from the colonies. The remedy suggested in Stephen's pamphlet was to revive the claims made by England in the Seven Years' War which entitled us to suppress the trade altogether. The policy thus suggested was soon embodied in various Orders in Council. The first was made on January 7, 1807, by the Whig Government before they left office and a more stringent order followed in November. The last was drawn by Perceval, the new Chancellor of the Exchequer. Perceval was a friend of Wilberforce and sympathised both with his religious views and his hatred of the slave trade. He soon became intimate with Stephen, to whose influence the Orders in Council were generally attributed. Brougham, the chief opponent of the policy, calls 'War in Disguise' 'brilliant and captivating,' and says that its statement of facts was undeniable. I cannot say that I have found it amusing, but it is written with vigour and impressive earnestness. Brougham calls Stephen the 'father of the system'; and, whether the system were right or wrong, it had undoubtedly a great influence upon the course of events. I fear that my grandfather was thus partly responsible for the unfortunate war with the United States; but he clearly meant well. In any case, it was natural that Perceval should desire to make use of his supporter's talents. He found a seat in Parliament for his friend.

Stephen was elected member for Tralee on Feb. 25, 1808, and in the Parliament which met in 1812 was returned for East Grimstead.

Stephen thus entered Parliament as an advocate of the Government policy. His revolutionary tendencies had long vanished. He delivered a speech upon the Orders in Council on May 6, 1809, which was reprinted as a pamphlet.[1] He defended the same cause against the agitation led by Brougham in 1812. A Committee of the whole House was granted, and Stephen was cross-examining one of Brougham's witnesses (May 11, 1812), when a shot was heard in the lobby, and Perceval was found to have been murdered by Bellingham. Stephen had just before been in Perceval's company, and it was thought, probably enough, that he would have been an equally welcome victim to the maniac. He was made ill by the shock, but visited the wretched criminal to pray for his salvation.

Stephen, according to Brougham, showed abilities in Parliament which might have given him a leading position as a debater. His defective education, his want of tact, and his fiery temper, prevented him from rising to a conspicuous position. His position as holding a Government seat in order to advocate a particular measure, and the fact that politics in general were to him subsidiary to the one great end of abolishing slavery, would also be against him. Two incidents of his career are characteristic. The benchers of Lincoln's Inn had passed a resolution—'after dinner' it was said by way of apology—that no one should be called to the bar who had written for hire in a newspaper. A petition was presented to the House of Commons upon which Stephen made an effective speech (March 23, 1810). He put the case of a young man struggling against difficulties to obtain admission to a legal career and convicted

[1] Reprinted in 13 *Hansard's Debates*, App. xxv.–cxxii.

of having supported himself for a time by reporting. Then he informed the House that this was no imaginary picture, but the case of 'the humble individual who now addresses you.' Immense applause followed; Croker and Sheridan expressed equal enthusiasm for Stephen's manly avowal, and the benchers' representatives hastened to promise that the obnoxious rule should be withdrawn. When the allied sovereigns visited London in 1814 another characteristic incident occurred. They were to see all the sights: the King of Prussia and Field-Marshal Blücher were to be edified by hearing a debate; and the question arose how to make a debate conducted in so august a presence anything but a formality. 'Get Whitbread to speak,' suggested someone, 'and Stephen will be sure to fly at him.' The plan succeeded admirably. Whitbread asked for information about the proposed marriage of the Princess Charlotte to the Prince of Orange. Stephen instantly sprang up and rebuked the inquirer. Whitbread complained of the epithet 'indecent' used by his opponent. The Speaker intervened and had to explain that the epithet was applied to Mr. Whitbread's proposition and not to Mr. Whitbread himself. Stephen, thus sanctioned, took care to repeat the phrase; plenty of fire was introduced into the debate, and Field-Marshal Blücher had the pleasure of seeing a parliamentary battle.[1]

Whitbread was obnoxious to Stephen as a radical and as an opponent of the Orders in Council. Upon another question Stephen was still more sensitive. When the topic of slavery is introduced, the reporters describe him as under obvious agitation, and even mark a sentence with inverted commas to show that they are giving his actual words. The slave-trade had been abolished before he entered Parliament; but Government was occasionally

[1] *Hansard's Debates*, June 20, 1814; and *Abbot's Diary*, ii. 503.

charged with slackness in adopting some of the measures necessary to carry out the law, and their supporters were accused of preserving 'a guilty silence.' Such charges stung Stephen to the quick. 'I would rather,' he exclaimed (June 15, 1810), 'be on friendly terms with a man who had strangled my infant son than support an administration guilty of slackness in suppressing the slave trade.' 'If Lord Castlereagh does not keep to his pledges,' he exclaimed (June 29, 1814, when Romilly spoke of the 'guilty silence'), 'may my God not spare me, if I spare the noble lord and his colleagues!' The Government declined to take up a measure for the registration of slaves which Stephen had prepared, and which was thought to be necessary to prevent evasions of the law. Thereupon he resigned, in spite of all entreaties, accepting the Chiltern Hundreds, April 14, 1815.

Brougham warmly praises his independence, and wishes that those who had spoken slightingly of his eloquence would take to heart his example. Stephen had in 1811 been rewarded for his support of the Orders in Council by a Mastership in Chancery. Romilly observes that the appointment was questionable, because Stephen, though he was fully qualified by his abilities, was not sufficiently versed in the law. His friends said that it was no more than a fair compensation for the diminution of the prize business which resulted from the new regulations. He held the office till 1831, when failing health caused his retirement. He lived for many years at Kensington Gore on the site of the present Lowther Lodge; and there from 1809 to 1821 Wilberforce was his neighbour. His second wife, Wilberforce's sister, died in October 1816. After leaving Parliament, he continued his active crusade against slavery. He published, it is said, four pamphlets in 1815; and in 1824 brought out the first volume of his 'Slavery of the British West India Colonies

delineated.' This is an elaborate digest of the slave laws; and it was followed in 1830 by a second volume describing the actual working of the system. From about 1819 Stephen had a small country house at Missenden, Bucks.[1] Here he was occasionally visited by his brother-in-law, and a terrace upon which they used to stroll is still known as 'Wilberforce's Walk.' Stephen had a keen love of country scenery and had inherited from his father a love of long daily walks. I record from tradition one story of his prowess. In the early morning of his seventieth birthday, it is said, he left Missenden on foot, walked twenty-five miles to Hampstead, where he breakfasted with a son-in-law, thence walked to his office in London, and, after doing his day's work, walked out to Kensington Gore in the evening. It was a good performance, and I hope not injurious to his health, nor can I accept the suggestion that the old gentleman may have taken a lift in a pony carriage by which he used to be followed in his walks. He certainly retained his vigour, although he had suffered from some serious illnesses. He was attacked by yellow fever in the West Indies, when his brother William and another doctor implored him to let them bleed him. On his obstinate refusal, they turned their backs in consultation, when he suddenly produced a bottle of port from under his pillow and took it off in two draughts. Next day he left his bed and defended a disregard of professional advice which had been suggested by previous observations. He became a staunch believer in the virtues of port, and though he never exceeded a modest half-bottle, drank it steadily till the last. He was, I am told, and a portrait confirms the impression, a very handsome old man with a beautiful complexion, masses of white hair, and a keen thoughtful face. He died at Bath, October 10, 1832. He

[1] It is now occupied by my friend Dr. Robert Liveing.

was buried at Stoke Newington by the side of his mother. There Wilberforce had promised to be buried by his friend; but for him Westminster Abbey was a fitter resting-place.[1]

The Master and his elder brother had retrieved the fortunes of the family. William returned to England, and died about 1807. He left a family by his wife, Mary Forbes, and his daughter Mary became the wife of Archdeacon Hodson and the mother of Hodson of 'Hodson's Horse.' The Master's younger brother, John, also emigrated to St. Christopher's, practised at the bar, and ultimately became Judge of the Supreme Court of New South Wales in 1825. He died at Sydney in 1834. John's fourth son, Alfred, born at St. Christopher's, August 20, 1802, was called to the bar at Lincoln's Inn in 1823, became in 1825 Solicitor-General of Tasmania, in 1839 judge, and in 1843 Chief Justice, of New South Wales. He retired in 1873, and was for a time Lieutenant-Governor of the Colony. He received many honours, including the Grand Cross of the Order of St. Michael and St. George, and a seat in the Privy Council; and, from all that I have heard, I believe that he fully deserved them. He took an important part in consoli-

[1] For the life of my grandfather, I have relied upon his autobiography and upon the following among other works: *Life of the late James Stephen* by his son, Sir George Stephen, Victoria, 1875 (this little book, written when the author's memory was failing, is full of singular mistakes, a fact which I mention that I may not be supposed to have overlooked the statements in question but which it is needless to prove in detail); *Jottings from Memory* (two interesting little pamphlets privately printed by Sir Alfred Stephen in 1889 and 1891); and Wilberforce's *Life and Letters* (containing letters and incidental references). In Colquhoun's *Wilberforce, his Friends and his Times* (1886), pp. 180–198, is an account of Stephen's relations to Wilberforce, chiefly founded upon this. See also Roberts' *Hannah More* (several letters); Brougham's *Speeches* (1838), i. pp. 402–414 (an interesting account partly quoted in Sir J. Stephen's *Clapham Sect*, in *Essays in Ecclesiastical Biography*); Henry Adam's *History of the United States* (1891), iii. pp. 50–52 and elsewhere; Walpole's *Life of Perceval*.

dating the criminal law of the colonies, and near the end of his long career (at the age of 89) became conspicuous in advocating a change in the law of divorce. The hardships suffered by women who had been deserted by bad husbands had excited his sympathy, and in spite of much opposition he succeeded in obtaining a measure for relief in such cases. Sir Alfred died on October 15, 1894. He was twice married, and had five sons and four daughters by one marriage and four sons and five daughters by the other. One of his sons is a judge in the colony, and I believe that at the period of his death he had considerably more than a hundred living descendants in three generations. He was regarded with universal respect and affection as a colonial patriarch, and I hope that his memory may long be preserved and his descendants flourish in the growing world of Australia. To the very end of his life, Sir Alfred maintained his affectionate relations with his English relatives, and kept up a correspondence which showed that his intellectual vigour was unabated almost to the last.

III. MASTER STEPHEN'S CHILDREN

I have now to speak of the generation which preceded my own, of persons who were well known to me, and who were the most important figures in the little world in which my brother and I passed our infancy. James Stephen, the Master, was survived by six children, of whom my father was the third. I will first say a few words of his brothers and sisters. The eldest son, William, became a quiet country clergyman. He was vicar of Bledlow, Bucks (for nearly sixty years), and of Great Stagsden, Beds, married a Miss Grace, but left no children, and died January 8, 1867. I remember him only as a mild old gentleman with a taste

for punning, who came up to London to see the Great Exhibition of 1851, and then for the first time had also the pleasure of seeing a steamboat. Steamboats are rare in the Buckinghamshire hills, among which he had vegetated ever since their invention.

Henry John, the second son, born January 18, 1787, was at the Chancery bar. He married his cousin, Mary Morison, and from 1815 till 1832 he lived with his father at Kensington Gore. A nervous and retiring temper prevented him from achieving any great professional success, but he was one of the most distinguished writers of his time upon legal subjects. His first book, 'Treatise on the Principles of Pleading in Civil Actions,' originally published in 1824, has gone through many editions both in England and America. Chancellor Kent, as Allibone's dictionary informs me, calls it 'the best book that ever was written in explanation of the science,' and many competent authorities have assured me that it possesses the highest merits as a logical composition, although the law of which it treats has become obsolete. The reputation acquired by this book led to his appointment to a seat in the Common Law Commission formed in 1828; and in the same year he became serjeant-at-law. His brother commissioners became judges, but his only promotion was to a commissionership of bankruptcy at Bristol in 1842.[1] In 1834 he published a 'Summary of the Criminal Law,' which was translated into German. His edition of Blackstone's Commentaries first appeared in 1841. It contained from the first so much of his own work as to be almost an independent performance. In later editions he introduced further changes to adapt it to later legislation, and it is still a standard book.

[1] He served also in 1842 upon a Commission of Inquiry into the forgery of Exchequer bills.

He lived after the Bristol appointment at Cleevewood in the parish of Mangotsfield. He retired in February 1854, and lived afterwards in Clifton till his death on November 28, 1864. I remember him as a gentle and courteous old man, very shy, and, in his later years, never leaving his house, and amusing himself with speculating upon music and the prophecies. He inherited apparently the nervous temperament of his family with less than their usual dash of the choleric.[1] My uncle, Sir George, declares that the serjeant was appointed to a judgeship by Lord Lyndhurst, but immediately resigned, on the ground that he felt that he could never bear to pass a capital sentence.[2] I record the anecdote, not as true (I have reasons for thinking it erroneous), but as indicating the impression made by his character.

The fourth brother, George, born about 1794, was a man of very different type. In him appeared some of the characteristics of his irascible and impetuous grandfather. His nature was of coarser fibre than that of his sensitive and nervous brothers. He was educated at Magdalene College, Cambridge; and was afterwards placed in the office of the Freshfields, the eminent firm of solicitors. He had, I have been told, an offer of a partnership in the firm, but preferred to set up for himself. He was employed in the rather unsavoury duty of procuring evidence as to the conduct of Queen Caroline upon the Continent. In 1826 he undertook an inquiry ordered by the House of Commons in consequence of complaints as

[1] Serjeant Stephen's wife and a daughter died before him. He left two surviving children: Sarah, a lady of remarkable ability, author of a popular religious story called *Anna; or, the Daughter at Home*, and a chief founder of the 'Metropolitan Association for Befriending Young Servants,' who died unmarried, aged 79, on January 5, 1895; and James, who edited some of his father's books, was judge of the County Court at Lincoln, and died in November 1894. A short notice of the serjeant is in the *Law Times* of December 24, 1894.

[2] *Life of James Stephen*, p. 36.

to the existence of a slave trade in Mauritius. He became acquainted with gross abuses, and resolved thereupon to take up the cause with which his family was so closely connected. He introduced himself to O'Connell in order to learn some of the secrets of the great art of agitation. Fortified by O'Connell's instructions, he proceeded to organise the 'celebrated Agency Committee.' This committee, headed by Zachary Macaulay, got up meetings and petitions throughout the country, and supported Buxton in the final assault upon slavery. For his services in the cause, George Stephen was knighted in 1838. He showed a versatile ability by very miscellaneous excursions into literature. He wrote in 1837 'Adventures of a Gentleman in search of a Horse,' which became popular, and proved that, besides understanding the laws relating to the subject, he was the only one, as I believe, of his family who could clearly distinguish a horse from a cow. A very clever but less judicious work was the 'Adventures of an Attorney in search of Practice,' first published in 1839, which gave or was supposed to give indiscreet revelations as to some of his clients. Besides legal pamphlets, he proved his sound Evangelicalism by a novel called 'The Jesuit at Cambridge' (1847), intended to unveil the diabolical machinations of the Catholic Church. An unfortunate catastrophe ruined his prospects. He had founded a society for the purchase of reversions and acted as its solicitor. It flourished for some years, till misunderstandings arose, and Sir George had to retire, besides losing much more than he could afford. He then gave up the profession which he had always disliked, was called to the bar in 1849 and practised for some years at Liverpool, especially in bankruptcy business. At last he found it necessary to emigrate and settled at Melbourne in 1855. He found the colonists at least as perverse as

the inhabitants of his native country. He wrote a 'Life of Christ' (not after the plan of Renan) intended to teach them a little Christianity, and a (so-called) life of his father, which is in the main an exposition of his own services and the ingratitude of mankind. The state of Australian society seemed to him to justify his worst forebodings; and he held that the world in general was in a very bad way. It had not treated him too kindly; but I fear that the complaints were not all on one side. He was, I suppose, one of those very able men who have the unfortunate quality of converting any combination into which they enter into an explosive compound. He died at Melbourne, June 20, 1879.[1]

The Master's two daughters were Sibella, born 1792, and Anne Mary, whose birth caused the death of her mother in December 1796. Sibella married W. A. Garratt, who was second wrangler and first Smith's prizeman in 1804. He was a successful barrister and a man of high character, though of diminutive stature. 'Mr. Garratt,' a judge is reported to have said to him, 'when you are addressing the court you should stand up.' 'I am standing up, my lord.' 'Then, Mr. Garratt, you should stand upon the bench.' 'I am standing upon the bench, my lord.' He had been disinherited by his father, I have heard, for preferring a liberal profession to trade, but upon his father's death his brothers made over to him the share which ought to have been left to him. He was for many years on the Committee of the Church Missionary Society, and wrote in defence of Evangelical principles.[2]

[1] By his wife, a Miss Ravenscroft, he had seven children, who all emigrated with him. The eldest, James Wilberforce Stephen, was fourth wrangler in 1844 and Fellow of St. John's College, and afterwards a judge in the colony of Victoria.

[2] His *Constitution of a Christian Church* (1846) was republished, in 1874, as *Churches the Many and the One*, with additional notes by his son,

His houses at Hampstead and afterwards at Brighton were among our youthful resorts; and my aunt remains in my memory as a gentle, kindly old lady, much afflicted by deafness. Mr. Garratt died in 1858, aged 77, and his wife at the same age on February 7, 1869.

Anne Mary, my other aunt, married Thomas Edward Dicey. He was a schoolfellow and college friend of my father. I may observe, for the sake of Cambridge readers, that, after passing his first year of university life at Oxford, he came to Cambridge ignorant of mathematics and in delicate health, which prevented him from reading hard. In spite of this, he was senior wrangler in 1811—a feat which would now be impossible for a Newton. He was the calmest and gentlest of human beings, and to his calmness was attributable the fact that he lived till 1858, although when he was twenty the offices refused to insure his life for a year on any terms. Those who knew him best regarded him as a man of singular wisdom and refinement. He lived, till he came to London for the later education of his boys, in a small country house at Claybrook, near Lutterworth, and was proprietor of the 'Northampton Mercury,' one of the oldest papers in England, founded, I believe, by his grandfather. This Claybrook house was the scene of some of our happiest childish days. My aunt was a most devoted mother of four sons, whose early education she conducted in great part herself. In later years she lived in London, and was the most delightful of hostesses. Her conversation proved her to possess a full share of the family talents, and although, like her sister, she suffered from deafness, a talk with her was, to my mind at least, as great a treat as a talk with the most famous performers in the social art. After her

the Rev. Samuel Garratt, now rector of St. Margaret's, Ipswich, and canon of Norwich.

husband's death, she was watched by her youngest son, Frank, who had become an artist, with a tender affection such as is more frequently exhibited by a daughter to an infirm father. She died on October 28, 1878, and has been followed by two of her sons, Henry and Frank. The two surviving sons, Edward and Albert Venn Dicey, Vinerian professor of Law at Oxford, are both well known in the literary and political world.

I must now tell so much as I know, and is relevant to my purpose, of my father's life. James Stephen, fourth at least of the name, and third son of the Master, was born January 3, 1789, at Lambeth, during his father's visit to England. He had an attack of small-pox during his infancy, which left a permanent weakness of eyesight. The Master's experience had not taught him the evils of desultory education. James, the younger, was, I believe, under various schoolmasters, of whom I can only mention John Prior Estlin, of St. Michael's Hill, Bristol, a Unitarian, and the Rev. H. Jowett, of Little Dunham, Norfolk, who was one of the adherents to Evangelicalism. The change probably marks the development of his father's convictions. He entered Trinity Hall, Cambridge, in 1806. At that time the great Evangelical leader at Cambridge was Isaac Milner, the President of Queens' College. Milner's chief followers were William Farish, of Magdalene, and Joseph Jowett, of Trinity Hall, both of them professors. Farish, as I have said, married my grandfather's sister, and the colleges were probably selected for my father and his brother George with a view to the influence of these representatives of the true faith. The 'three or four years during which I lived on the banks of the Cam,' said my father afterwards,[1] 'were passed in a very pleasant, though not a very cheap, hotel. But had

[1] *Lectures*, vol. i. preface.

they been passed at the Clarendon, in Bond Street, I do not think that the exchange would have deprived me of any aids for intellectual discipline or for acquiring literary and scientific knowledge.' That he was not quite idle I infer from a copy of Brotier's 'Tacitus' in my possession with an inscription testifying that it was given to him as a college prize. He took no university honours, took the degree of LL.B. in 1812, and was called to the bar at Lincoln's Inn November 11, 1811. His father had just become Master in Chancery, and was able to transfer some of his clients to the son. James the younger thus gained some experience in colonial matters, and 'employed himself in preparing a digest of the colonial laws in general.'[1] He obtained leave from the third Earl Bathurst, then and for many years afterwards the head of the Colonial Department, to examine the official records for this purpose. In 1813 Lord Bathurst, who was in general sympathy with the opinions of the Clapham sect, appointed James Stephen Counsel to the Colonial Department. His duties were to report upon all acts of colonial legislature. He received a fee of three guineas for each act, and the office at first produced about 300*l.* a year. After a time the post became more laborious. He was receiving 1,000*l.* a year some ten years after his appointment, with, of course, a corresponding increase of work.[2] The place was, however, compatible with the pursuit of the profession, and my father in a few years was making 3,000*l.* a year, and was in a position which gave him as fair a prospect of obtaining professional honours as was enjoyed by any man of his standing. The

[1] Preface to *Slavery Delineated*, i. pp. lix.–lxx. My grandfather takes some trouble to show—and, as I think, shows conclusively—that the appointment mentioned in the text was not a job, and that it involved a considerable saving of public money. But this matter will interest no one at present.

[2] I have to thank Mr. Bryce, now President of the Board of Trade, for kindly procuring me the dates of my father's official appointments.

earliest notice which I have found of him from an outsider is a passage in Crabb Robinson's diaries.[1] Robinson met him on July 10, 1811, and describes him as a 'pious sentimentalist and moralist,' who spoke of his prospects 'with more indifference than was perhaps right in a layman.' The notice is oddly characteristic. From 1814 my father was for nine years a member of the committee of the Church Missionary Society, after which time his occupations made attendance impossible. I have already indicated the family connection with the Clapham sect, and my father's connection was now to be drawn still closer. On December 22, 1814, he married Jane Catherine Venn, second daughter of the Rev. John Venn, of Clapham.

IV. THE VENNS

My brother was of opinion that he inherited a greater share of the Venn than of the Stephen characteristics. I certainly seem to trace in him a marked infusion of the sturdy common sense of the Venns, which tempered the irritable and nervous temperament common to many of the Stephens. The Venns were of the very blue blood of the party. They traced their descent through a long line of clergymen to the time of Elizabeth.[2] The troubles of two loyalist Venns in the great rebellion are briefly commemorated in Walker's 'Sufferings of the Clergy.' The first Venn who is more than a name was a Richard Venn, who died in 1739. His name occasionally turns up in the obscurer records of eighteenth-century theology. He was rector of St. Antholin's, in the city of London, and incurred the wrath of the pugnacious Warburton and of Warburton's friend (in early days) Conyers Middleton. He ventured to

[1] Communicated by my friend Mr. J. Dykes Campbell.

[2] My cousin, Dr. John Venn, informs me that the first traceable Venn was a farmer in Broad Hembury, Devonshire, whose son, William Venn, was vicar of Otterton from 1599 to 1621.

call Middleton an 'apostate priest'; and Middleton retorted that if he alluded to a priest as the 'accuser,' everyone would understand that he meant to refer to Mr. Venn. In fact, Venn had the credit of having denounced Thomas Rundle, who, according to Pope, 'had a heart,' and according to Venn was a deist in disguise. Rundle's reputation was so far damaged that his theology was thought too bad for Gloucester, and, like other pieces of damaged goods, he was quartered upon the Irish Church.

Richard Venn married the daughter of the Jacobite conspirator John Ashton, executed for high treason in 1691. His son Henry, born March 2, 1724, made a more enduring mark and became the chief light of the movement which was contemporaneous with that led by Wesley and Whitefield, though, as its adherents maintained, of independent origin. He was a sturdy, energetic man. As a boy he had shown his principles by steadily thrashing the son of a dissenting minister till he became the terror of the young schismatic. He played (his biographer says) in 1747 for Surrey against all England, and at the end of the match gave his bat to the first comer, saying, 'I will never have it said of me, Well struck, Parson!' He was ordained a few days later, and was 'converted by Law's "Serious Call."' While holding a curacy at Clapham he became a friend of John Thornton, father of the better known Henry Thornton. John was a friend of John Newton and of the poet Cowper, to whom he allowed money for charitable purposes, and both he and his son were great lights at Clapham. From 1759 to 1771 Venn was vicar of Huddersfield, and there became famous for eloquence and energy. His 'Complete Duty of Man'—the title is adopted in contrast to the more famous 'Whole Duty of Man'—was as the sound of a trumpet to the new party. For three generations it was the accepted manual of the sect and a trusted exposition of their characteristic theology.

Venn's health suffered from his pastoral labours at Huddersfield; and from 1771 till near his death (June 24, 1797) he was rector of Yelling, in Huntingdonshire. There his influence extended to the neighbouring University of Cambridge. The most eminent Cambridge men of the day, Paley, and Watson, and Hey, were tending to a theology barely distinguishable from the Unitarianism which some of them openly adopted. But a chosen few, denounced by their enemies as methodistical, sought the spiritual guidance of Henry Venn. The most conspicuous was Charles Simeon (1759–1836), who for many years was the object of veneration and of ridicule for his uncouth eloquence in the pulpit of Trinity Church. Even to my own day, his disciples and disciples' disciples were known to their opponents as 'Sims.'[1]

John Venn, son of this Henry Venn, born at Clapham in 1759, was brought up in the true faith. He was a pupil of Joseph Milner, elder brother of the more famous Isaac Milner, and was afterwards, like his father, at Sidney Sussex College. Simeon was one of his intimate friends. In 1792 Venn became rector of Clapham; and there provided the spiritual food congenial to the Thorntons, the Shores, the Macaulays, the Wilberforces, and the Stephens. The value of his teaching may be estimated by any one who will read three volumes of sermons published posthumously in 1814. He died July 1, 1813; but his chief claim to remembrance is that he was the projector and one of the original founders of the Church Missionary Society, in 1799, which was, as it has continued to be, the most characteristic product of the evangelical party.[2]

[1] *Henry Venn's Life*, published by his grandson, Henry Venn, in 1834, has gone through several editions.

[2] A short life of John Venn is prefixed to his *Sermons*. He married Catherine King on October 22, 1789, and left seven children:—

1. Catherine Eling, born Dec. 2, 1791, died unmarried, April 22, 1827.

John Venn's children were of course intimate with the Stephens. In later life the sons, Henry and John, had a great influence upon my father; Henry in particular was a man of very remarkable character. He was educated by his father till 1813, when he was sent to live with Farish, then Lucasian professor and resident at Chesterton, close to Cambridge. He was at Queen's College, then flourishing under the patronage of evangelical parents attracted by Milner's fame; was nineteenth wrangler in 1818, and for a time was fellow and tutor of his college. In 1827 Wilberforce gave him the living of Drypool, a suburb of Hull, and there in 1829 he married Martha, fourth daughter of Nicholas Sykes, of Swanland, Yorkshire. In 1834 he became vicar of St. John's, Holloway, in the parish of Islington. About 1838 he became subject to an affection of the heart caused mainly by his efforts in carrying his wife upstairs during her serious illness. The physician told him that the heart might possibly adapt itself to a new condition, but that the chances were greatly in favour of a fatal end to the illness. He was forced to retire for two years from work, while his wife's illness developed into a consumption. She died March 21, 1840. Venn's closest relations used to speak with a kind of awe of the extraordinary strength of his conjugal devotion. He was entreated to absent himself from some of the painful ceremonials at her funeral, but declined. 'As if anything,' he said, 'could make any difference to me now.' His own health, however, recovered contrary to expectation; and he resolutely took up his duties in life. On October 5, 1841,

2. Jane Catherine, Lady Stephen, b. May 16, 1793, d. February 27, 1875.
3. Emelia, b. April 20, 1795, d. Feb. 1881.
4. Henry, b. February 10, 1796, d. January 13, 1873.
5. Caroline, Mrs. Ellis Batten, b. 1799, d. Jan. 26, 1870.
6. Maria, who died in infancy.
7. John, b. April 17, 1801, d. May 12, 1890.

he was appointed honorary secretary to the Church Missionary Society, having been on the Committee since 1819, and he devoted the rest of his life to its service with unflagging zeal. He gave up his living of 700*l.* a year and refused to take any remuneration for his work. He was appointed by Bishop Blomfield to a prebend at St. Paul's, but received and desired no other preferment. He gradually became infirm, and a few months before his death, January 12, 1873, was compelled to resign his post. Henry Venn laboured through life in the interests of a cause which seemed to him among the highest, and which even those who hold entirely different opinions must admit to be a worthy one, the elevation that is, moral and spiritual, of the lower races of mankind. He received no rewards except the approval of his conscience and the sympathy of his fellows; and he worked with an energy rarely paralleled by the most energetic public servant. His labours are described in a rather shapeless book[1] to which I may refer for full details. But I must add a few words upon his character. Venn was not an eloquent man either in the pulpit or on paper; nor can I ascribe him any power of speculative thought. He had been from youth steeped in the evangelical doctrine, and was absolutely satisfied with it to the last. 'I knew,' he once said, 'as a young man all that could be said against Christianity, and I put the thoughts aside as temptations of the devil. They have never troubled me since.' Nor was he more troubled by the speculative tendencies of other parties in the Church. His most obvious mental characteristic was a shrewd common sense, which one of his admirers suggests may have been caught by contagion in his Yorkshire living. In

[1] *Missionary Secretariat of Henry Venn, B.D.*, by the Rev. William Knight, with introductory chapter by his sons the Rev. John Venn and the Rev. Henry Venn, 1880.

truth it was an innate endowment shared by others of his family. In him it was combined with a strong sense of humour which is carefully kept out of his writing, and which, as I used to fancy, must have been at times a rather awkward endowment. The evangelical party has certain weaknesses to which, so far as I know, my uncle contrived to shut his eyes. The humour, however, was always bubbling up in his talk, and combined as it was with invariable cheeriness of spirit, with a steady flow of the strongest domestic affection, and with a vigorous and confident judgment, made him a delightful as well as an impressive companion. Although outside of the paths which lead to preferment or to general reputation, he carried a great weight in all the counsels of his party. His judgment, no doubt, entitled him to their respect. Though a most devoted clergyman, he had some of the qualities which go to make a thoroughly trustworthy lawyer. He was a marked exception to the famous observation of Clarendon that 'the clergymen understand the least, and take the worst measure of human affairs of all mankind that can write and read.' Henry Venn's example showed that the clergyman's gown need not necessarily imply disqualification for a thorough man of business. He was a man to do thoroughly whatever he undertook. 'What a mercy it is,' said his sister Emelia, 'that Henry is a good man, for good or bad he could never repent.'

His younger brother, John, was a man of much less intellectual force but of singular charm of character. In 1833 he became incumbent of a church at Hereford in the gift of the Simeon trustees, and lived there till his death in 1890, having resigned his living about 1870. He had the simplicity of character of a Dr. Primrose, and was always overflowing with the kindliest feelings towards his relatives and mankind in general. His enthusiasm was

directed not only to religious ends but to various devices for the physical advantage of mankind. He set up a steam corn mill in Hereford, which I believe worked very successfully for the supply of pure flour to his parishioners, and he had theories about the production of pigs and poultry upon which he could dilate with amusing fervour. He showed his principles in a public disputation with a Roman Catholic priest at Hereford. I do not know that either of them converted anybody; but John Venn's loveableness was not dependent upon dialectical ability. He was accepted, I may say, as the saint of our family; and Aylstone Hill, Hereford, where he lived with his unmarried sister Emelia, (a lady who in common sense and humour strongly resembled her brother Henry), was a place of pilgrimage to which my father frequently resorted, and where we all found a model of domestic happiness.

The youngest sister, Caroline, married the Rev. Ellis Batten, a master at Harrow School. He died young in 1830, and she was left with two daughters, the elder of whom, now Mrs. Russell Gurney, survives, and was in early years one of the most familiar members of our inner home circle.

I must now speak of my mother. 'In one's whole life,' says Gray, 'one can never have any more than a single mother'—a trite observation, he adds, which yet he never discovered till it was too late. Those who have made the same discovery must feel also how impossible it is to communicate to others their own experience, and indeed how painful it is even to make the attempt. Almost every man's mother, one is happy to observe, is the best of mothers. I will only assert what I could prove by evidence other than my own impressions. My mother, then, must have been a very handsome young

woman. A portrait—not a very good one—shows that she had regular features and a fine complexion, which she preserved till old age. Her beauty was such as implies a thoroughly good constitution and unbroken health. She was too a rather romantic young lady. She knew by heart all such poetry as was not excluded from the sacred common; she could repeat Cowper and Wordsworth and Campbell and Scott, and her children learnt the 'Mariners of England' and the 'Death of Marmion' from her lips almost before they could read for themselves. She accepted, of course, the religious opinions of her family, but in what I may call a comparatively mild form. If she had not the humour of her brother Henry and her sister Emelia, she possessed an equal amount of common sense. Her most obvious characteristic as I knew her was a singular serenity, which indicated a union of strong affection and sound judgment with an entire absence of any morbid tendencies. Her devotion to her husband and children may possibly have influenced her estimate of their virtues and talents. But however strong her belief in them, it never betrayed her to partiality of conduct. We were as sure of her justice as of her affection. Her servants invariably became attached to her. Our old nurse, Elizabeth Francis, lived with us for forty-three years, and her death in 1865 was felt as a deep family sorrow. The quaint Yorkshire cook, whose eccentricities had given trouble and whose final parting had therefore been received with equanimity on the eve of a journey abroad, was found calmly sitting in our kitchen when we returned, and announcing, truly as it turned out, that she proposed to stay during the rest of my mother's life. But this domestic loyalty was won without the slightest concession of unusual privileges. Her characteristic calmness appeared in another way. She suffered the heaviest of

blows in the death of her husband, after forty-five years of unbroken married happiness, and of her eldest son. On both occasions she recovered her serenity and even cheerfulness with marked rapidity, not certainly from any want of feeling, but from her constitutional incapacity for dwelling uselessly upon painful emotions. She had indeed practised cheerfulness as a duty in order to soothe her husband's anxieties, and it had become part of her character. The moral equilibrium of her nature recovered itself spontaneously as wounds cure by themselves quickly in thoroughly sound constitutions. She devoted her spare time in earlier years and almost her whole time in later life to labours among the poor, but was never tempted to mere philanthropic sentimentalism. A sound common sense, in short, was her predominant faculty; and, though her religious sentiments were very strong and deep, she was so far from fanatical that she accepted with perfect calmness the deviations of her children from the old orthodox faith. My brother held, rightly as I think, that he inherited a large share of these qualities. To my father himself, the influence of such a wife was of inestimable value. He, the most nervous, sensitive of men, could always retire to the serene atmosphere of a home governed by placid common sense and be soothed by the gentlest affection. How necessary was such a solace will soon be perceived.

V. JAMES STEPHEN, COLONIAL UNDER-SECRETARY

The young couple began prosperously enough. My father's business was increasing; and after the peace they spent some summer vacations in visits to the continent. They visited Switzerland, still unhackneyed, though Byron and Shelley were celebrating its charms.

Long afterwards I used to hear from my mother of the superlative beauties of the Wengern Alp and the Staubbach (though she never, I suspect, read 'Manfred'), and she kept up for years a correspondence with a monk of the hospital on the St. Bernard. Her first child, Herbert Venn Stephen, was born September 30, 1822; and about this time a change took place in my father's position. He had a severe illness, caused, it was thought, by overwork. He had for a time to give up his chancery business and then to consider whether he should return to it and abandon the Colonial Office, or give up the bar to take a less precarious position now offered to him in the office. His doubts of health and his new responsibilities as a father decided him. On January 25, 1825, he was appointed Counsel to the Colonial Office, and on August 2 following Counsel to the Board of Trade, receiving 1,500*l.* a year for the two offices, and abandoning his private practice. A daughter, Frances Wilberforce, was born on September 8, 1824, but died on July 22 following. A quaint portrait in which she is represented with her elder brother, in a bower of roses, is all that remains to commemorate her brief existence. For some time Herbert was an only son; and a delicate constitution made his education very difficult. My father hit upon the most successful of several plans for the benefit of his children when, at the beginning of 1829, he made arrangements under which Frederick Waymouth Gibbs became an inmate of our family in order to give my brother a companion. Although this plan was changed three years later, Frederick Gibbs became, as he has ever since remained, a kind of adopted brother to us, and was in due time in the closest intimacy with my brother James Fitzjames.

After his acceptance of the permanent appointment my father's energies were for twenty-two years devoted

entirely to the Colonial Office. I must dwell at some length upon his character and position, partly for his sake and partly because it is impossible without understanding them to understand my brother's career.

My brother's whole life was profoundly affected, as he fully recognised, by his father's influence. Fitzjames prefixed a short life of my father to a posthumous edition of the 'Essays in Ecclesiastical Biography.' The concluding sentence is significant of the writer's mood. 'Of Sir James Stephen's private life and character,' he says, 'nothing is said here, as these are matters with which the public has no concern, and on which the evidence of his son would not be impartial.' My brother would, I think, have changed that view in later years. I, at any rate, do not feel that my partiality, whatever it may be, is a disqualification for attempting a portrait. And, though the public may have no right to further knowledge, I think that such part of the public as reads these pages may be the better for knowing something more of a man of whom even a son may say that he was one of the conspicuously good and able men of his generation.

The task, however, is no easy one. His character, in the first place, is not one to be defined by a single epithet. 'Surely,' said his friend Sir Henry Taylor to him upon some occasion, 'the simple thing to do is so and so.' He answered doubtfully, adding, 'The truth is I am *not* a simple man.' 'No,' said Taylor, 'you are the most composite man that I have met with in all my experience of human nature.'[1] Taylor entered the Colonial Office in the beginning of 1824, and soon formed an intimate and lifelong friendship with his colleague. His autobiography contains some very vivid records of the impression made

[1] Sir H. Taylor's *Autobiography* (1885), ii. 303. Taylor was b. October 18, 1800, and d. October 31, 1886.

by my father's character upon a very fine observer in possession of ample opportunities for knowledge. It does something, though less than I could wish, to diminish another difficulty which encounters me. My father's official position necessarily throws an impenetrable veil over the work to which his main energies were devoted. His chief writings were voluminous and of great practical importance: but they repose in the archives of the Colonial Office; and even such despatches of his as have seen the light are signed by other names, and do not necessarily represent his opinions. 'The understanding,' says my brother in the 'Life,' 'upon which permanent offices in the civil service of the Crown are held is that those who accept them shall give up all claim to personal reputation on the one hand and be shielded from personal responsibility on the other.' Of this compact, as Fitzjames adds, neither my father nor his family could complain. His superiors might sometimes gain credit or incur blame which was primarily due to the adoption of his principles. He was sometimes attacked, on the other hand, for measures attributed to his influence, but against which he had really protested, although he was precluded from any defence of his conduct. To write the true history of our colonial policy in his time would be as much beyond my powers as it is outside my purpose; to discriminate his share in it would probably be now impossible for anyone. I can only take a few hints from Sir Henry Taylor and from my brother's account which will sufficiently illustrate some of my father's characteristics.

'For a long period,' says Taylor,[1] 'Stephen might better have been called the "Colonial Department" itself than "Counsel to the Colonial Department."' During Lord Glenelg's tenure of office (1835–1839), and for many

[1] *Autobiography*, i. 136.

years before and after, 'he literally ruled the Colonial empire.'[1] This involved unremitting labour. Taylor observes that Stephen 'had an enormous appetite for work,' and 'rather preferred not to be helped. I,' he adds, humorously, 'could make him perfectly welcome to any amount of it.' For years he never left London for a month, and, though in the last five years preceding his retirement in 1847, he was absent for rather longer periods, he took a clerk with him and did business in the country as regularly as in town.

His duties were of the most various kind. The colonies, as my brother observes, were a collection of states varying from youthful nations like Canada down to a small settlement of Germans on the rock of Heligoland; their populations differed in race, laws, religion, and languages; the authority of the Crown varied from absolute power over an infant settlement to supremacy over communities in some essential respects independent. My father's duty was to be familiar with every detail of these complicated relations, to know the state of parties and local politics in each colony, and to be able to advise successive Secretaries of State who came without special preparation to the task. He had to prepare drafts of all important despatches and of the numerous Acts of Parliament which were required during a period of rapid and important changes. 'I have been told,' says my brother, elsewhere,[2] that 'he was a perfectly admirable Under-Secretary of State, quick, firm, courageous, and a perfect master of his profession and of all the special knowledge which his position required, and which, I believe, no other man in England possessed to anything like the same extent.'

A man of long experience, vast powers of work, and decided views naturally obtained great influence with his

[1] P. 233. [2] Autobiographical fragment.

superiors; and that such an influence was potent became generally believed among persons interested in and often aggrieved by the policy of the Government. Stephen was nicknamed as 'King Stephen,' or 'Mr. Over-Secretary Stephen,' or 'Mr. Mother-Country Stephen.' The last epithet, attributed to Charles Buller, meant that when the colonies were exhorted to pay allegiance to the mother country they were really called upon to obey the irrepressible Under-Secretary. I dimly divine, though I am not much of a politician, that there is an advantage in criticising the permanent official in a department. He cannot answer an attack upon him, and it is also an attack upon the superior who has yielded to his influence. At any rate, though my father received the warmest commendation from his official superiors, he acquired a considerable share of unpopularity. For this there were other reasons, of which I shall presently speak.

Little as I can say of the details of this policy in which he was concerned, there are one or two points of which I must speak. My father had accepted the appointment, according to Taylor, partly with the view of gaining an influence upon the slavery question. In this, says Taylor, he was eminently successful, and his success raised the first outcry against him.[1] His family and friends were all, as I have shown, deeply engaged in the anti-slavery agitation. As an official he could of course take no part in such action, and his father had to give solemn assurances that the son had given him no information. But the power of influencing the Government in the right direction was of equal importance to the cause. The elaborate Act, still in force, by which previous legislation against the slave trade was finally consolidated and extended was passed in 1824 (5 George IV. cap. 113). It

[1] *Taylor*, ii. 301.

was drawn by my father and dictated by him in one day and at one sitting.[1] It fills twenty-three closely printed octavo pages. At this time the Government was attempting to adopt a middle course between the abolitionists and the planters by passing what were called 'meliorating Acts,' Acts, that is, for improving the treatment of the slaves. The Colonial Assemblies declined to accept the proposals. The Colonial Office remonstrated, obtained reports and wrote despatches, pointing out any abuses discovered: the despatches were laid before Parliament and republished by Zachary Macaulay in the 'Anti-slavery Reporter.' Agitation increased. An insurrection of slaves in Jamaica in 1831, cruelly suppressed by the whites, gave indirectly a death blow to slavery. Abolition, especially after the Reform Bill, became inevitable, but the question remained whether the grant of freedom should be immediate or gradual, and whether compensation should be granted to the planters. The problem had been discussed by Stephen, Taylor, and Lord Howick, afterwards Earl Grey (1802–1894), and various plans had been considered. In March 1833, however, Mr. Stanley, afterwards Lord Derby, became head of the Colonial Office; and the effect was at first to reduce Stephen and Taylor to their 'original insignificance.' They had already been attacked in the press for taking too much upon themselves, and Stanley now prepared a measure without their assistance. He found that he had not the necessary experience for a difficult task, and was soon obliged to have recourse to Stephen, who prepared the measure which was finally passed. The

[1] Stephen's *History of the Criminal Law*, iii. 256. My brother was generally accurate in such statements, though I cannot quite resist the impression that he may at this time have been under some confusion as to the time employed upon this occasion and the time devoted to the Bill of 1833 to be mentioned directly.

delay had made expedition necessary if slavery was not to continue for another year. My father received notice to draw the Act on Saturday morning. He went home and completed his task by the middle of the day on Monday. The Act (3 & 4 William IV. c. 73) contains sixty-six sections, fills twenty-six pages in the octavo edition of the Statute-book, and creates a whole scheme of the most intricate and elaborate kind. The amanuensis to whom it was dictated used to tell the story as an illustration of his own physical powers. At that time, as another clerk in the office tells my brother, 'it was no unusual thing for your father to dictate before breakfast as much as would fill thirty sides of office folio paper,' equal to about ten pages of the 'Edinburgh Review.' The exertion, however, in this instance was exceptional: only upon one other occasion did my father ever work upon a Sunday; it cost him a severe nervous illness and not improbably sowed the seed of later attacks.[1]

I can say little of my father's action in later years. On September 17, 1834, he was appointed to the newly created office of Assistant Under-Secretary of State. He had, says Taylor, for many years done the work of the Under-Secretary, and he objected to doing it any longer on

[1] *Taylor*, i. 121–127. Sir Henry Taylor says that Stanley prepared a measure with Sir James Graham which was introduced into the House of Commons and 'forthwith was blown into the air.' I can find no trace of this in Hansard or elsewhere, and as Stanley only became Colonial Secretary (March 28) six weeks before introducing the measure which passed, and no parliamentary discussion intervened, I fancy that there must be some error. The facts as stated above seem to be at any rate sufficiently proved by Taylor's contemporary letter. According to Taylor, Stanley's great speech (May 14, 1833) upon introducing the Government measure was founded upon my father's judicious cramming, and the success of the measure was due to Stephen's putting his own design into enactments and Mr. Stanley's into a preamble. Taylor at the time thought that my father had been ill treated, but I have not the knowledge necessary to form any opinion. My brother's *Life* is the authority for the circumstances under which the measure was prepared, and rests on sufficient evidence.

the same terms. The Under-Secretary complained to Lord Melbourne that his subordinate desired to supplant him, and got only the characteristic reply, 'It looks devilishly like it.'[1] In 1836 he had to retire, and my father became Under-Secretary in his place, with a salary of 2,000*l.* a year, on February 4 of that year, and at the same time gave up his connection with the Board of Trade. He was actively concerned in the establishment of responsible government in Canada. The relations with that colony were, as my brother says, 'confused and entangled in every possible way by personal and party questions at home and by the violent dissensions which existed in Canada itself.' The difficulty was aggravated, he adds, by the fact that my father, whatever his personal influence, had no authority whatever; and although his principles were ultimately adopted he had constantly to take part in measures which he disapproved. 'Stephen's opinions,' says Taylor, 'were more liberal than those of most of his chiefs, and at one period he gave more power than he intended to a Canadian Assembly from placing too much confidence in their intentions.'[2] Upon this matter, however, Taylor admits that he was not fully informed. I will only add that my father appears to have shared the opinions then prevalent among the Liberal party that the colonies would soon be detached from the mother country. On the appointment of a Governor-General of Canada, shortly before his resignation of office, he observes in a diary that it is not unlikely to be the last that will ever be made.[3]

[1] *Taylor*, i. 233. [2] *Ibid.* ii. 303.

[3] I think it right to notice that in the first edition of T. Mozley's *Reminiscences* (1882), i. 111, there appeared an anecdote of my father in his official capacity which was preposterous on the face of it. It was completely demolished in a letter written by my brother which appeared in the *Times* of July 6, 1882, and withdrawn in a later edition.

I have already noticed my father's unpopularity. It was a not unlikely result of exercising a great and yet occult influence upon a department of Government which is likely in any case to be more conspicuous for its failures than for its successes. There were, however, more personal reasons which I think indicate his peculiar characteristics. I have said enough to illustrate his gluttony of work. I should guess that, without intending it, he was also an exacting superior. He probably overestimated the average capacity for work of mankind, and condemned their indolence too unsparingly. Certainly his estimate of the quantity of good work got out of officials in a public office was not a high one. Nor, I am sure, did he take a sanguine view of the utility of such work as was done in the Colonial Office. 'Colonial Office being an Impotency' (as Carlyle puts it in his 'Reminiscences,' 'as Stephen inarticulately, though he never said or whispered it, well knew), what could an earnest and honest kind of man do but try ot teach you how not to do it?' I fancy that this gives in Carlyle's manner the unpleasant side of a true statement. My father gave his whole life to work, which he never thought entirely satisfactory, although he did his duty without a word of complaint. Once, when advising Taylor to trust rather to literature than to Government employment, he remarked, 'You may write off the first joints of your fingers for them, and then you may write off the second joints, and all that they will say of you is, "What a remarkably short-fingered man!"'[2] But he had far too much self-respect to grumble at the inevitable results of the position.

My father, however, was a man of exquisitely sensitive nature—a man, as my mother warned his children, 'without a skin,' and he felt very keenly the attacks of which

[1] *Reminiscences*, ii. 224. [2] *Taylor*, i. 235.

he could take no notice. In early days this had shown itself by a shyness 'remarkable,' says Taylor, beyond all 'shyness that you could imagine in anyone whose soul had not been pre-existent in a wild duck.' [1] His extreme sensibility showed itself too in other ways. He was the least sanguine of mankind. He had, as he said in a letter, 'a morbidly vivid perception of possible evils and remote dangers.' A sensitive nature dreads nothing so much as a shock, and instinctively prepares for it by always anticipating the worst. He always expected, if I may say so, to be disappointed in his expectations. The tendency showed itself in a general conviction that whatever was his own must therefore be bad. He could not bear to have a looking-glass in his room lest he should be reminded of his own appearance. 'I hate mirrors vitrical and human,' he says, when wondering how he might appear to others. He could not bear that his birthday should be even noticed, though he did not, like Swift, commemorate it by a remorseful ceremonial. He shrank from every kind of self-assertion; and in matters outside his own province often showed to men of abilities very inferior to his own a deference which to those who did not know him might pass for affectation. The life of a recluse had strong attractions for him. He was profoundly convinced that the happiest of all lives was that of a clergyman, who could devote himself to study and to the quiet duties of his profession. Circumstances had forced a different career upon him. He had as a very young man taken up a profession which is not generally supposed to be propitious to retiring modesty; and was ever afterwards plunged into active business, which brought him into rough contact with politicians and men of business of all classes. The result was that he formed a manner calcu-

[1] *Taylor*, ii. 304.

lated to shield himself and keep his interlocutors at a distance. It might be called pompous, and was at any rate formal and elaborate. The natural man lurked behind a barrier of ceremony, and he rarely showed himself unless in full dress. He could unbend in his family, but in the outer world he put on his defensive armour of stately politeness, which even for congenial minds made familiarity difficult if it effectually repelled impertinence. But beneath this sensitive nature lay an energetic and even impetuous character, and an intellect singularly clear, subtle, and decisive. His reasons were apt to be complicated, but he came to very definite results, and was both rapid and resolute in action. He had 'a strong will,' says Taylor, 'and great tenacity of opinion. When he made a mistake, which was very seldom considering the prodigious quantity of business he despatched, his subordinates could rarely venture to point it out; he gave them so much trouble before he could be evicted from his error.' In private life, as Taylor adds, his friends feared to suggest any criticisms; not because he resented advice but because he suffered so much from blame.

Another peculiarity was oddly blended with this. Among his topics of self-humiliation, sufficiently frequent, one was his excess of 'loquacity.' A very shy man, it is often remarked, may shrink from talking, but when he begins to talk he talks enormously. My father, at any rate, had a natural gift for conversation. He could pour out a stream of talk such as, to the best of my knowledge, I have never heard equalled. The gift was perhaps stimulated by accidents. The weakness of his eyes had forced him to depend very much upon dictation. I remember vividly the sound of his tread as he tramped up and down his room, dictating to my mother or sister, who took down his words in shorthand and found it hard to

keep pace with him. Even his ordinary conversation might have been put into print with scarcely a correction, and was as polished and grammatically perfect as his finished writing. The flow of talk was no doubt at times excessive. Taylor tells of an indignant gentleman who came to his room after attempting to make some communication to the Under-Secretary. Mr. Stephen, he said, had at once begun to speak, and after discoursing for half an hour without a moment's pause, courteously bowed the gentleman out, thanking him for the valuable information which still remained unuttered. Sir James Stephen, said Lord Monteagle to Carlyle, 'shuts his eyes on you and talks as if he were dictating a colonial despatch.'[1] This refers to a nervous trick of shyness. When talking, his eyelids often had a tremulous motion which concealed the eyes themselves, and gave to at least one stranger the impression that he was being addressed by a blind man.

The talk, however, was always pointed and very frequently as brilliant as it was copious. With all the monotony of utterance, says Taylor, 'there was such a variety and richness of thought and language, and often so much wit and humour, that one could not help being interested and attentive.' On matters of business, he adds, 'the talk could not be of the same quality and was of the same continuity.' He gives one specimen of the 'richness of conversational diction' which I may quote. My father mentioned to Taylor an illness from which the son of Lord Derby was suffering. He explained his knowledge by saying that Lord Derby had spoken of the case to him in a tone for which he was unprepared. 'In all the time when I saw him daily I cannot recollect that he ever said one word to me about anything but business; and *when the stupendous glacier, which had towered over*

[1] *Reminiscences*, ii. 223.

my head for so many years, came to dissolve and descend upon me in parental dew, you may imagine, &c., &c.'[1] My brother gives an account to which I can fully subscribe, so far as my knowledge goes. Our father's printed books, he says, show his mind 'in full dress, as under restraint and subject to the effect of habitual self-distrust. They give no idea of the vigour and pungency and freedom with which he could speak or let himself loose or think aloud as he did to me. Macaulay was infinitely more eloquent, and his memory was a thing by itself. Carlyle was striking and picturesque, and, after a fashion, forcible to the last degree. John Austin discoursed with the greatest dignity and impressiveness. But my father's richness of mind and union of wisdom, good sense, keenness and ingenuity, put him, in my opinion, quite on the same sort of level as these distinguished men; and gave me a feeling about him which attuned itself with and ran into the conviction that he was also one of the very kindest, most honourable, and best men I ever knew in my whole life.' From my recollection, which is less perfect than was my brother's, I should add that one thing which especially remains with me was the stamp of fine literary quality which marked all my father's conversation. His talk, however copious, was never commonplace; and, boy as I was when I listened, I was constantly impressed by the singular skill with which his clear-cut phrases and lively illustrations put even familiar topics into an apparently new and effective light.

The comparison made by my brother between my father's talk and his writings may be just, though I do not altogether agree with it. The 'Essays in Ecclesiastical Biography,' by which he is best known, were written during the official career which I have described.

[1] *Taylor*, ii. 302.

The composition was to him a relaxation, and they were written early in the morning or late at night, or in the intervals of his brief holidays. I will not express any critical judgment of their qualities; but this I will say: putting aside Macaulay's 'Essays,' which possess merits of an entirely different order, I do not think that any of the collected essays republished from the 'Edinburgh Review' indicate a natural gift for style equal to my father's. Judging from these, which are merely the overflowing of a mind employed upon other most absorbing duties, I think that my father, had he devoted his talents to literature, would have gained a far higher place than has been reached by any of his family.[1]

My father gave in his Essays a sufficient indication of his religious creed. That creed, while it corresponded to his very deepest emotions, took a peculiar and characteristic form. His essay upon the 'Clapham Sect'[2] shows how deeply he had imbibed its teaching, while it yet shows a noticeable divergence. All his youthful sympathies and aims had identified him with the early evangelicals. As a lad he had known Granville Sharp, the patriarch of the anti-slavery movement; and till middle life he was as intimate as the difference of ages permitted with Wilberforce and with Thomas Gisborne, the most refined if not most effective preacher of the party. He revered many of the party from the bottom of his heart. His loving remembrance of his intercourse with them is shown in every line of his description, and to the end of his life he retained his loyalty to the men, and, as he at least thought, to their creed. The later generation,

[1] Some of my father's letters are given in Macvey Napier's correspondence. I think that they are the best in a collection which includes letters from many of the most eminent men of the time. A few others are in the collection of Sir H. Taylor's correspondence, edited by Professor Dowden in 1888

[2] The title, of course, was given by Sydney Smith.

which called itself evangelical, repudiated his claim. He was attacked in their chief organ. When some remonstrance was made by his brother-in-law, Henry Venn, he wrote to the paper (I quote from memory), 'I can only regret that any friend of mine should have stooped to vindicate me from any censure of yours'; and declined further controversy.

The occasion of this was an attack which had been made upon him at Cambridge, where certain learned dons discovered on his appointment to the professorship of history that he was a 'Cerinthian.' I do not pretend to guess at their meaning. Anyhow he had avowed, in an 'epilogue' to his Essays, certain doubts as to the meaning of eternal damnation—a doctrine which at that time enjoyed considerable popularity. The explanation was in part simple. 'It is laid to my charge,' he said, 'that I am a Latitudinarian. I have never met with a single man who, like myself, had passed a long series of years in a free intercourse with every class of society who was not more or less what is called a Latitudinarian.' In fact, he had discovered that Clapham was not the world, and that the conditions of salvation could hardly include residence on the sacred common. This conviction, however, took a peculiar form in his mind. His Essays show how widely he had sympathised with many forms of the religious sentiment. He wrote with enthusiasm of the great leaders of the Roman Catholic Church; of Hildebrand and St. Francis, and even of Ignatius Loyola; and yet his enthusiasm does not blind him to the merits of Martin Luther, or Baxter, or Wesley, or Wilberforce. There were only two exceptions to his otherwise universal sympathy. He always speaks of the rationalists in the ordinary tone of dislike; and he looks coldly upon one school of orthodoxy. 'Sir James Stephen,' as was said

by someone, 'is tolerant towards every Church except the Church of England.' This epigram indicated a fact. Although he himself strenuously repudiated any charge of disloyalty to the Church whose ordinances he scrupulously observed, he was entirely out of sympathy with the specially Anglican movement of later years. This was no doubt due in great part to the intensely strong sympathies of his youth. When the Oxford movement began he was already in middle life and thoroughly steeped in the doctrines which they attacked. He resembled them, indeed, in his warm appreciation of the great men of Catholicism. But the old churchmen appealed both to his instincts as a statesman and to his strong love of the romantic. The Church of the middle ages had wielded a vast power; men like Loyola and Xavier had been great spiritual heroes. But what was to be said for the Church of England since the Reformation? Henry Martyn, he says, in the 'Clapham Sect,' is 'the one heroic name which adorns her annals since the days of Elizabeth. Her apostolic men either quitted or were cast out of her communion. Her *Acta Sanctorum* may be read from end to end with a dry eye and an unquickened pulse.' He had perhaps heard too many sermons. 'Dear Mother Church,' he says after one such experience, 'thy spokesmen are not selected so as to create any danger that we should be dazzled by human eloquence or entangled by human wisdom.' The Church of England, as he says elsewhere ('Baxter'), afforded a refuge for three centuries to the great, the learned, and the worldly wise, but was long before it took to the nobler end of raising the poor, and then, as he would have added, under the influence of the Clapham Sect. The Church presented itself to him mainly as the religious department of the State, in which more care was taken to suppress eccentricity than to

arouse enthusiasm; it was eminently respectable, but at the very antipodes of the heroic. Could he then lean to Rome? He could not do so without damning the men he most loved, even could his keen and in some ways sceptical intellect have consented to commit suicide. Or to the Romanising party in the Church? The movement sprang from the cloister, and he had breathed the bracing air of secular life. He was far too clear-headed not to see whither they were tending. To him they appeared to be simply feeble imitations of the real thing, dabbling with dangerous arguments, and trying to revive beliefs long sentenced to extinction.

And yet, with his strong religious beliefs, he could not turn towards the freethinkers. He perceived indeed with perfect clearness that the Christian belief was being tried by new tests severer than the old, and that schools of thought were arising with which the orthodox would have to reckon. Occasional intimations to this effect dropped from him in his conversations with my brother and others. But, on the whole, the simple fact was that he never ventured to go deeply into the fundamental questions. His official duties left him little time for abstract thought; and his surpassingly ingenious and versatile mind employed itself rather in framing excuses for not answering than in finding thorough answers to possible doubts. He adopted a version of the doctrine *crede ut intelligas*, and denounced the mere reasoning machines like David Hume who appealed unequivocally to reason. But what the faculty was which was to guide or to overrule reason in the search for truth was a question to which I do not think that he could give any distinct answer. He was too much a lover of clearness to be attracted by the mysticism of Coleridge, and yet he shrank from the results of seeing too clearly.

I have insisted upon this partly because my father's attitude greatly affected my brother, as will be presently seen. My brother was not a man to shrink from any conclusions, and he rather resented the humility which led my father, in the absence of other popes, to attach an excessive importance to the opinions of Henry and John Venn—men who, as Fitzjames observes, were, in matters of speculative inquiry, not worthy to tie his shoes. Meanwhile, as his health became weaker in later years, my father seemed to grow more weary of the secular world, and to lean more for consolation under anxiety to his religious beliefs. Whatever doubts or tendencies to doubt might affect his intellect, they never weakened his loyalty to his creed. He spoke of Christ, when such references were desirable, in a tone of the deepest reverence blended with personal affection, which, as I find, greatly impressed my brother. Often, in his letters and his talk, he would dwell upon the charm of a pious life, free from secular care and devoted to the cultivation of religious ideals in ourselves and our neighbours. On very rare occasions he would express his real feelings to companions who had mistaken his habitual reserve for indifference. We had an old ivory carving, left to him in token of gratitude by a gentleman whom he had on some such occasion solemnly reproved for profane language, and who had at the moment felt nothing but irritation.

The effect of these tendencies upon our little domestic circle was marked. My father's occupations naturally brought him into contact with many men of official and literary distinction. Some of them became his warm friends. Besides Henry Taylor, of whom I have spoken, Taylor's intimate friends, James Spedding and Aubrey de Vere, were among the intimates of our household; and they and other men, younger than himself, often joined

him in his walks or listened to his overflowing talk at home. A next-door neighbour for many years was Nassau Senior, the political economist, and one main author of the Poor Law of 1834. Senior, a very shrewd man of the world, was indifferent to my father's religious speculations. Yet he and his family were among our closest friends, and in habits of the most familiar intercourse with us. With them was associated John Austin, regarded by all the Utilitarians as the profoundest of jurists and famous for his conversational powers; and Mrs. Austin, a literary lady, with her daughter, afterwards Lady Duff Gordon. I think of her (though it makes me feel old when I so think) as Lucy Austin. She was a brilliant girl, reported to keep a rifle and a skull in her bedroom. She once startled the sense of propriety of her elders by performing in our house a charade, in which she represented a dying woman with a 'realism'—to use the modern phrase—worthy of Madame Sarah Bernhardt. Other visitors were occasionally attracted. My father knew John Mill, though never, I fancy, at all intimately. He knew politicians such as Charles Greville, the diarist, who showed his penetration characteristically, as I have been told, by especially admiring my mother as a model of the domestic virtues which he could appreciate from an outside point of view.

We looked, however, at the world from a certain distance, and, as it were, through a veil. My father had little taste for general society. It had once been intimated to him, as he told me, that he might find admission to the meetings of Holland House, where, as Macaulay tells us, you might have the privilege of seeing Mackintosh verify a reference to Thomas Aquinas, and hearing Talleyrand describe his ride over the field of Austerlitz. My father took a different view. He declined to take advan-

tage of this opening into the upper world, because, as he said, I don't know from what experience, the conversation turned chiefly upon petty personal gossip. The feasts of the great were not to his taste. He was ascetic by temperament. He was, he said, one of the few people to whom it was the same thing to eat a dinner and to perform an act of self-denial. In fact, for many years he never ate a dinner, contenting himself with a biscuit and a glass of sherry as lunch, and an egg at tea, and thereby, as the doctors said, injuring his health. He once smoked a cigar, and found it so delicious that he never smoked again. He indulged in snuff until one day it occurred to him that snuff was superfluous; when the box was solemnly emptied out of the window and never refilled. Long sittings after dinner were an abomination to him, and he spoke with horror of his father's belief in the virtues of port wine. His systematic abstemiousness diminished any temptation to social pleasures of the ordinary kind. His real delight was in quieter meetings with his own family—with Stephens, and Diceys, and Garratts, and above all, I think, with Henry and John Venn. At their houses, or in the country walks where he could unfold his views to young men, whose company he always enjoyed, he could pour out his mind in unceasing discourse, and be sure of a congenial audience.

Our household must thus be regarded as stamped with the true evangelical characteristics—and yet with a difference. The line between saints and sinners or the Church and the world was not so deeply drawn as in some cases. We felt, in a vague way, that we were, somehow, not quite as other people, and yet I do not think that we could be called Pharisees. My father felt it a point of honour to adhere to the ways of his youth. Like Jonadab, the son of Rechab, as my brother observes,

he would drink no wine for the sake of his father's commandments (which, indeed, is scarcely a felicitous application after what I have just said). He wore the uniform of the old army, though he had ceased to bear unquestioning allegiance. We never went to plays or balls; but neither were we taught to regard such recreations as proofs of the corruption of man. My father most carefully told us that there was nothing intrinsically wrong in such things, though he felt strongly about certain abuses of them. At most, in his favourite phrase, they were 'not convenient.' We no more condemned people who frequented them than we blamed people in Hindostan for riding elephants. A theatre was as remote from us as an elephant. And therefore we grew up without acquiring or condemning such tastes. They had neither the charm of early association nor the attraction of forbidden fruit. To outsiders the household must have been pervaded by an air of gravity, if not of austerity. But we did not feel it, for it became the law of our natures, not a law imposed by external sanctions. We certainly had a full allowance of sermons and Church services; but we never, I think, felt them to be forced upon us. They were a part, and not an unwelcome part, of the order of nature. In another respect we differed from some families of the same creed. My father's fine taste and his sensitive nature made him tremblingly alive to one risk. He shrank from giving us any inducement to lay bare our own religious emotions. To him and to our mother the needless revelation of the deeper feelings seemed to be a kind of spiritual indelicacy. To encourage children to use the conventional phrases could only stimulate to unreality or actual hypocrisy. He recognised, indeed, the duty of impressing upon us his own convictions, but he spoke only when speaking was a duty. He read prayers daily in his family, and

used to expound a few verses of the Bible with characteristic unction. In earlier days I find him accusing himself of a tendency to address 'homiletical epistles' to his nearest connections; but he scrupulously kept such addresses for some adequate occasion in his children's lives. We were, indeed, fully aware, from a very early age, of his feelings, and could not but be continuously conscious that we were under the eye of a father governed by the loftiest and purest motives, and devoting himself without stint to what he regarded as his duty. He was a living 'categorical imperative.' 'Did you ever know your father do a thing because it was pleasant?' was a question put to my brother, when he was a small boy, by his mother. She has apparently recorded it for the sake of the childish answer: 'Yes, once—when he married you.' But we were always conscious of the force of the tacit appeal.

I must not give the impression that he showed himself a stern parent. I remember that when his first grandchild was born, I was struck by the fact that he was the most skilful person in the family at playing with the baby. Once, when some friends upon whom he was calling happened to be just going out, he said, 'Leave me the baby and I shall be quite happy.' Several little fragments of letters with doggerel rhymes and anecdotes suited for children recall his playfulness with infants, and as we grew up, although we learnt to regard him with a certain awe, he conversed with us most freely, and discoursed upon politics, history, and literature, and his personal recollections, as if we had been his equals, though, of course, with a width of knowledge altogether beyond our own. The risk of giving pain to a 'skinless' man was all that could cause any reserve between us; but a downright outspoken boy like my brother soon acquired and enjoyed a position on the most affectionate terms of familiarity.

We knew that he loved us; that his character was not only pure but chivalrous; and that intellectually he was a most capable guide into the most delightful pastures.

I will conclude by a word or two upon his physical characteristics. No tolerable likeness has been preserved. My father was rather above middle height, and became stout in later years. Though not handsome, his appearance had a marked dignity. A very lofty brow was surmounted by masses of soft fine hair, reddish in youth, which became almost white before he died. The eyes, often concealed by the nervous trick I have mentioned, were rather deeply set and of the purest blue. They could flash into visibility and sparkle with indignation or softer emotion. The nose was the nose of a scholar, rather massive though well cut, and running to a sharp point. He had the long flexible lips of an orator, while the mouth, compressed as if cut with a knife, indicated a nervous reserve. The skull was very large, and the whole face, as I remember him, was massive, though in youth he must have been comparatively slender.

His health was interrupted by some severe illnesses, and he suffered much at times from headache. His power of work, however, shows that he was generally in good health; he never had occasion for a dentist. He was a very early riser, scrupulously neat in dress, and even fanatical in the matter of cleanliness. He had beautiful but curiously incompetent hands. He was awkward even at tying his shoes; and though he liked shaving himself because, he said, that it was the only thing he could do with his hands, and he shaved every vestige of beard, he very often inflicted gashes. His handwriting, however, was of the very best. He occasionally rode and could, I believe, swim and row. But he enjoyed no physical exercise except walking, a love of which was hereditary. I

do not suppose that he ever had a gun or a fishing-rod in his hand.

And now, having outlined such a portrait as I can of our home, I begin my brother's life.[1]

[1] My father's children were :—

1. Herbert Venn, b. September 30, 1822, d. October 22, 1846.
2. Frances Wilberforce, b. September 8, 1824, d. July 22, 1825.
3. James Fitzjames, b. March 3, 1829, d. March 11, 1894.
4. Leslie, born November 28, 1832.
5. Caroline Emelia, born December 8, 1834.

CHAPTER II

EARLY LIFE

I. CHILDHOOD

In the beginning of 1829 my father settled in a house at Kensington Gore—now 42 Hyde Park Gate. There his second son, James Fitzjames, was born on March 3, 1829. James was the name upon which my grandfather insisted because it was his own. My father, because the name was his own, objected as long as he could, but at last compounded, and averted the evil omen, by adding Fitzjames. Two other children, Leslie and Caroline Emelia, were born in 1832 and 1834 at the same house. The Kensington of those days was still distinctly separate from London. A high wall divided Kensington Gardens from the Hounslow Road; there were still deer in the Gardens; cavalry barracks close to Queen's Gate, and a turnpike at the top of the Gloucester Road. The land upon which South Kensington has since arisen was a region of market gardens, where in our childhood we strolled with our nurse along genuine country lanes.

It would be in my power, if it were desirable, to give an unusually minute account of my brother's early childhood. My mother kept a diary, and, I believe, never missed a day for over sixty years. She was also in the habit of compiling from this certain family 'annals' in which she inserted everything that struck her as illustrative of the character of her children. About 1884 my

brother himself began a fragment of autobiography, which he continued at intervals during the next two or three years. For various reasons I cannot transfer it as a whole to these pages, but it supplies me with some very important indications.[1] A comparison with my mother's contemporary account of the incidents common to both proves my brother's narrative to be remarkably accurate. Indeed, though he disclaimed the possession of unusual powers of memory in general, he had a singularly retentive memory for facts and dates, and amused himself occasionally by exercising his faculty. He had, for example, a certain walking-stick upon which he made a notch after a day's march; it served instead of a diary, and years afterwards he would explain what was the particular expedition indicated by any one of the very numerous notches.

Although I do not wish to record trifles important only in the eyes of a mother, or interesting only from private associations, I will give enough from these sources to illustrate his early development; or rather to show how much of the later man was already to be found in the infant. It requires perhaps some faith in maternal insight to believe that before he was three months old he showed an uncommon power of 'amusing himself with his own thoughts,' and had 'a calm, composed dignity in his countenance which was quite amusing in so young a creature.' It will be more easily believed that he was healthy and strong, and by the age of six months 'most determined to have his own way.' On August 15, 1830, Wilberforce was looking at the baby, when he woke up, burst into a laugh, and exclaimed 'Funny!' a declaration which Wilberforce no doubt took in good part, though it seems to have been interpreted as a reflection upon the philanthropist's peculiar figure. My brother himself

[1] I have quoted a few phrases from it in the previous chapter.

gives a detailed description of his grandfather from an interview which occurred when the old gentleman was seventy-six and the infant very little more than three years old. He remembers even the room and the precise position of the persons present. He remembers too (and his mother's diary confirms the fact) how in the same year he announced that the Reform Bill had 'passed.' It was 'a very fine thing,' he said, being in fact a bill stuck upon a newsboy's hat, inscribed, as his nurse informed him, with the words 'Reform Bill.'

Although his memory implies early powers of observation, he did not show the precocity of many clever children. He was still learning to read about his fifth birthday, and making, as his mother complains, rather slow progress. But if not specially quick at his lessons, he gave very early and, as it seems to me, very noticeable proofs of thoughtfulness and independence of character. He was, as he remained through life, remarkable for that kind of sturdy strength which goes with a certain awkwardness and even sluggishness. To use a modern phrase, he had a great store of 'potential energy,' which was not easily convertible to purposes of immediate application. His mind swarmed with ideas, which would not run spontaneously into the regulation moulds. His mother's influence is perceptible in an early taste for poetry. In his third year he learnt by heart 'Sir John Moore's Burial,' 'Nelson and the North,' Wordsworth's 'Address to the Winds,' and Lord F. L. Gower's translation of Schiller ('When Jove had encircled this planet with light') from hearing his brother's repetition. He especially delighted in this bit of Schiller and in 'Chevy Chase,' though he resisted Watts' hymns. In the next two or three years he learns a good deal of poetry, and on September 5, 1834, repeats fifty lines of Henry the Fifth's speech before Agincourt without a fault.

'Pilgrim's Progress' and 'Robinson Crusoe' are read in due course as his reading improves, and he soon delights in getting into a room by himself and surrounding himself with books. His religious instruction of course began at the earliest possible period, and he soon learnt by heart many simple passages of the Bible. He made his first appearance at family prayers in November 1830, when the ceremony struck him as 'funny,' but he soon became interested and was taught to pray for himself. In 1832 his elder brother has nicknamed him the 'little preacher,' from his love of virtuous admonitions. In 1834 he confides to his mother that he has invented a prayer for himself which is 'not, you know, a childish sort of invention'; and in 1835 he explains that he has followed the advice given in a sermon (he very carefully points out that it was only *advice*, not an order) to pray regularly. Avowals of this kind, however, have to be elicited from him by delicate maternal questioning. He is markedly averse to any display of feeling. 'You should keep your love locked up as I do' is a characteristic remark at the age of four to his eldest brother. The effect of the religious training is apparently perceptible in a great tendency to self-analysis. His thoughts sometimes turn to other problems; —in October, 1835, for example, he asks the question which has occurred to so many thoughtful children, 'How do we know that the world is not a dream?'—but he is chiefly interested in his own motives. He complains in January 1834 that he has naughty thoughts. His father tells him to send them away without even thinking about them. He takes the advice, but afterwards explains that he is so proud of sending them away that he 'wants to get them that he may send them away.' He objects to a reward for being good, because it will make him do right from a wrong motive. He shrinks from compli-

ments. In October 1835 he leaves a room where some carpenters were at work because they had said something which he was sorry to have heard. They had said, as it appeared upon anxious inquiry, that he would make a good carpenter, and he felt that he was being cajoled. He remarks that even pleasures become painful when they are ordered, and explains why his sixth birthday was disappointing; he had expected too much.

His thoughtfulness took shapes which made him at times anything but easy to manage. He could be intensely obstinate. The first conflict with authority took place on June 28, 1831, when he resolutely declared that he would not say the 'Busy Bee.' This event became famous in the nursery, for in September 1834 he has to express contrition for having in play used the words 'By the busy bee' as an infantile equivalent to an oath. One difficulty was that he declined to repeat what was put into his mouth, or to take first principles in ethics for granted. When his mother reads a text to him (May 1832), he retorts, 'Then I will not be like a little child; I do not want to go to heaven; I would rather stay on earth.' He declines (in 1834) to join in a hymn which expresses a desire to die and be with God. Even good people, he says, may prefer to stay in this world. 'I don't want to be as good and wise as Tom Macaulay' is a phrase of 1832, showing that even appeals to concrete ideals of the most undeniable excellence fail to overpower him. He gradually developed a theory which became characteristic, and which he obstinately upheld when driven into a logical corner. A stubborn conflict arose in 1833, when his mother was forced to put him in solitary confinement during the family teatime. She overhears a long soliloquy in which he admits his error, contrasts his position with that of the happy who are perhaps even now

having toast and sugar, and compares his position to the 'last night of Pharaoh.' 'What a barbarian I am to myself!' he exclaims, and resolves that this shall be his last outbreak. On being set at liberty, he says that he was naughty on purpose, and not only submits but requests to be punished. For a short time he applies spontaneously for punishments, though he does not always submit when the request is granted. But this is a concession under difficulties. His general position is that by punishing him his mother only 'procures him to be much more naughty,' and he declines as resolutely as Jeremy Bentham to admit that naughtiness in itself involves unhappiness, or that the happiness of naughtiness should not be taken into account. He frequently urges that it is pleasanter while it lasts to give way to temper, and that the discomfort only comes afterwards. It follows logically, as he argues in 1835, that if a man could be naughty all his life he would be quite happy. Some time later (1838) he is still arguing the point, having now reached the conclusion to which the Emperor Constantine gave a practical application. The desirable thing would be to be naughty all your life, and to repent just at the end.

These declarations are of course only interpolations in the midst of many more edifying though less original remarks. He was exceedingly conscientious, strongly attached to his parents, and very kind to his younger brother and sister. I note that when he was four years old he already thought it, as he did ever afterwards, one of the greatest of treats to have a solitary talk with his father. He was, however, rather unsociable and earned the nickname of 'Gruffian' for his occasionally surly manner. This, with a stubborn disposition and occasional fits of the sulks, must have made it difficult to manage a child who persisted in justifying 'naughtiness' upon

general principles. He was rather inclined to be indolent, and his mother regrets that he is not so persevering as Frederick (Gibbs). His great temptation, he says himself, in his childhood was to be 'effeminate and lazy,' and 'to justify these vices by intellectual and religious excuses.' A great deal of this, he adds, has been 'knocked out of him'; he cannot call himself a sluggard or a hypocrite, nor has he acted like a coward. 'Indeed,' he says, 'from my very infancy I had an instinctive dislike of the maudlin way of looking at things,' and he remembers how in his fifth year he had declared that guns were not 'dreadful things.' They were good if put to the proper uses. I do not think that there was ever much real 'effeminacy' to be knocked out of him. It is too harsh a word for the slowness with which a massive and not very flexible character rouses itself to action. His health was good, except for a trifling ailment which made him for some time pass for a delicate child. But the delicacy soon passed off and for the next fifty years he enjoyed almost unbroken health.

In 1836 he explains some bluntness of behaviour by an argument learnt from 'Sandford and Merton' that politeness is objectionable. In August occurs a fit of obstinacy. He does not want to be forgiven but to be 'happy and comfortable.' 'I do not feel sorry, for I always make the best of my condition in every possible way, and being sorry would make me uncomfortable. That is not to make the best of my condition.' His mother foresees a contest and remarks 'a daring and hardened spirit which is not natural to him.' Soon after, I should perhaps say in consequence of, these outbreaks he was sent to school. My mother's first cousin, Henry Venn Elliott, was incumbent of St. Mary's Chapel at Brighton and a leading evangelical preacher. At Brighton, too, lived his sister, Miss Charlotte Elliott, author of

some very popular hymns and of some lively verses of a secular kind. Fitzjames would be under their wing at Brighton, where Elliott recommended a school kept by the Rev. B. Guest, at 7 Sussex Square. My mother took him down by the Brighton coach, and he entered the school on November 10, 1836.[1] The school, says Fitzjames, was in many ways very good; the boys were well taught and well fed. But it was too decorous; there was no fighting and no bullying and rather an excess of evangelical theology. The boys used to be questioned at prayers. 'Gurney, what's the difference between justification and sanctification?' 'Stephen, prove the Omnipotence of God.' Many of the hymns sung by the boys remained permanently in my brother's memory, and he says that he could give the names of all the masters and most of the boys and a history of all incidents in chronological order. Guest's eloquence about justification by faith seems to have stimulated his pupil's childish speculations. He read a tract in which four young men discuss the means of attaining holiness. One says, 'Meditate on the goodness of God'; a second, 'on the happiness of heaven'; a third, 'on the tortures of hell'; and a fourth, 'on the love of Christ.' The last plan was approved in the tract; but Fitzjames thought meditation on hell more to the purpose, and set about it deliberately. He imagined the world transformed into a globe of iron, white hot, with a place in the middle made to fit him so closely that he could not even wink. The globe was split like an orange; he was thrust by an angel into his place, immortal, unconsumable, and capable of infinite suffering; and then the two halves

[1] He says the 11th, and mentions more than once a date which afterwards became interesting for another reason. The date given by my mother at the time must be accepted; but this is the only error I have found in my brother's statements—and it is not of profound importance.

were closed, and he left in hideous isolation to suffer eternal torments. I guess from my own experience that other children have had similar fancies. He adds, however, a characteristic remark. 'It seemed to me then, as it seems now, that no stronger motive, no motive anything like so strong, can be applied to actuate any human creature toward any line of conduct. To compare the love of God or anything else is to my mind simply childish.' He refers to Mill's famous passage about going to hell rather than worship a bad God, and asks what Mill would say after an experience of a quarter of an hour. Fitzjames, however, did not dwell upon such fancies. They were merely the childish mode of speculation by concrete imagery. He became more sociable, played cricket, improved in health, and came home with the highest of characters as being the best and most promising boy in the school. He rose steadily, and seems to have been thoroughly happy for the next five years and a half.

In 1840 my mother observed certain peculiarities in me which she took at first to be indications of precocious genius. After a time, however, she consulted an eminent physician, who informed her that they were really symptoms of a disordered circulation. He added that I was in a fair way to become feeble in mind and deformed in body, and strongly advised that I should be sent to school, where my brain would be in less danger of injudicious stimulation. He declared that even my life was at stake. My father, much alarmed, took one of his prompt decisions. He feared to trust so delicate a child away from home, and therefore resolved to take a house in Brighton for a year or two, from which I might attend my brother's school. The Kensington house was let, and my mother and sister settled in Sussex Square, a few doors from Mr. Guest. My father, unable to leave his work,

took a lodging in town and came to Brighton for Sundays, or occasionally twice a week. In those days the journey was still by coach. When the railway began running in the course of 1841, I find my father complaining that it could not be trusted, and had yet made all other modes of travelling impossible. 'How many men turned of fifty,' asks my brother, 'would have put themselves to such inconvenience, discomfort, and separation from their wives for the sake of screening a delicate lad from some of the troubles of a carefully managed boarding school?' My brother was not aware of the apparent gravity of the case when he wrote this. Such a measure would have pushed parental tenderness to weakness had there been only a question of comfort; but my father was seriously alarmed, and I can only think of his conduct with the deepest gratitude.

To Fitzjames the plan brought the advantage that he became his father's companion in Sunday strolls over the Downs. His father now found, as my mother's diary remarks, that he could already talk to him as to a man, and Fitzjames became dimly aware that there were difficulties about Mr. Guest's theology. He went with my father, too, to hear Mr. Sortaine, a popular preacher whose favourite topic was the denunciation of popery. My father explained to the boy that some able men really defended the doctrine of transubstantiation, and my brother, as he remarks, could not then suspect that under certain conditions very able men like nonsense, and are even not averse to 'impudent lying,' in defence of their own authority. Incidentally, too, my father said that there were such people as atheists, but that such views should be treated as we should treat one who insulted the character of our dearest friend. This remark, attributed to a man who was incapable of insulting anyone, and was

a friend of such freethinkers as Austin and J. S. Mill, must be regarded as representing the impression made upon an inquisitive child by an answer adapted to his capacity. The impression was, however, very strong, and my brother notes that he heard it on a wettish evening on the cliff near the south end of the old Steine.

Fitzjames had discussed the merits of Mr. Guest's school with great intelligence and had expressed a wish to be sent to Rugby. He had heard bad accounts of the state of Eton, and some rumours of Arnold's influence had reached him. Arnold, someone had told him, could read a boy's character at a glance. At Easter 1841, my father visited the Diceys at Claybrook, and thence took his boy to see the great schoolmaster at Rugby. Fitzjames draws a little diagram to show how distinctly he remembers the scene. He looked at the dark, grave man and wondered, 'Is he now reading my character at a glance?' It does not appear that he was actually entered at Rugby, however, and my father had presently devised another scheme. The inconveniences of the Brighton plan had made themselves felt, and it now occurred to my father that he might take a house in Windsor and send both Fitzjames and me to Eton. We should thus, he hoped, get the advantages of a public school without being exposed to some of its hardships and temptations. He would himself be able to live with his family, although, as things then were, he had to drive daily to and from the Slough station, besides having the double journey from Paddington to Downing Street. We accordingly moved to Windsor in Easter 1842. Fitzjames's last months at school had not been quite so triumphant as the first, partly, it seems, from a slight illness, and chiefly for the characteristic reason, according to his master, that he would occupy himself with 'things

too high for him.' He read solid works (I find mention of Carlyle's 'French Revolution') out of school hours and walked with an usher to whom he took a fancy, discoursing upon absorbing topics when he should have been playing cricket. Fitzjames left Brighton on the day, as he notes, upon which one Mister was hanged for attempting murder—being almost the last man in England hanged for anything short of actual murder. He entered Eton on April 15, 1842, and was placed in the 'Remove,' the highest class attainable at his age.

II. ETON

The Eton period[1] had marked effects. Fitzjames owed, as he said, a debt of gratitude to the school, but it was for favours which would have won gratitude from few recipients. The boys at a public school form, I fancy, the most rigidly conservative body in existence. They hate every deviation from the accepted type with the hatred of an ancient orthodox divine for a heretic. The Eton boys of that day regarded an 'up-town boy' with settled contempt. His motives or the motives of his parents for adopting so abnormal a scheme were suspect. He might be the son of a royal footman or a prosperous tradesman in Windsor, audaciously aspiring to join the ranks of his superiors, and if so, clearly should be made to know his place. In any case he was exceptional, and therefore a Pariah, to associate with whom might be dangerous to one's caste. Mr. Coleridge tells me that even the school authorities were not free from certain suspicions. They wisely imagined, it appears, that my father had come among them as a spy, instigated, no doubt, by some diabolical

[1] I have to thank Mr. Arthur D. Coleridge, my brother's school-fellow and lifelong friend for a letter containing his recollections of this period.

design of 'reforming' the school and desecrating the shrine of Henry's holy shade. The poor man, already overpowered by struggling with refractory colonists from Heligoland to New Zealand, was of malice prepense stirring up this additional swarm of hornets. I can hardly suppose, however, that this ingenious theory had much influence. Mr. Coleridge also says that the masters connived at the systematic bullying of the town boys. I can believe that they did not systematically repress it. I must add, however, in justice to my school-fellows, that my personal recollections do not reveal any particular tyranny. Such bullying as I had to endure was very occasional, and has left no impression on my memory. Yet I was far less capable than Fitzjames of defending myself, and can hardly have forgotten any serious tormenting. The truth is that the difference between me and my brother was the difference between the willow and the oak, and that I evaded such assaults as he met with open defiance.

My brother, as has been indicated, was far more developed in character, if not in scholarship, than is at all common at his age. His talks with my father and his own reading had familiarised him with thoughts lying altogether beyond the horizon of the average boyish mind. He was thoughtful beyond his years, although not conspicuously forward in the school studies. He was already inclined to consider games as childish. He looked down upon his companions and the school life generally as silly and frivolous. The boys resented his contempt of their ways; and his want of sociability and rather heavy exterior at the time made him a natural butt for schoolboy wit. He was, he says, bullied and tormented till, towards the end of his time, he plucked up spirit to resist. Of the bullying there can be no doubt; nor (sooner or later) of the resistance. Mr. Coleridge

observes that he was anything but a passive victim, and turned fiercely upon the ringleaders of his enemies. 'Often,' he adds, 'have I applauded his backhanders as the foremost in the fray. He was only vanquished by numbers. His bill for hats at Sanders' must have amounted to a stiff figure, for my visions of Fitzjames are of a discrowned warrior, returning to Windsor bareheaded, his hair moist with the steam of recent conflict.' My own childish recollections of his school life refer mainly to pugilism. In October 1842, as I learn from my mother's diary, he found a big boy bullying me, and gave the boy such a thrashing as was certain to prevent a repetition of the crime. I more vividly recollect another occasion, when a strong lad was approaching me with hostile intent. I can still perceive my brother in the background; when an application of the toe of his boot between the tails of my tyrant's coat disperses him instantaneously into total oblivion. Other scenes dimly rise up, as of a tumult in the school-yard, where Fitzjames was encountering one of the strongest boys in the school amidst a delighted crowd, when the appearance of the masters stopped the proceedings. Fitzjames says that in his sixteenth year (i.e. 1844–5) he grew nearly five inches, and instead of outgrowing his strength became a 'big, powerful young man, six feet high,'—and certainly a very formidable opponent.

Other boys have had similar experiences without receiving the same impression. 'I was on the whole,' he says, 'very unhappy at Eton, and I deserved it; for I was shy, timid, and I must own cowardly. I was like a sensible grown-up woman among a crowd of rough boys.' After speaking of his early submission to tyranny, he adds: 'I still think with shame and self-contempt of my boyish weakness, which, however, did not continue in

later years. The process taught me for life the lesson that to be weak is to be wretched, that the state of nature is a state of war, and *Væ Victis* the great law of Nature. Many years afterwards I met R. Lowe (Lord Sherbrooke) at dinner. He was speaking of Winchester, and said with much animation that he had learnt one great lesson there, namely, that a man can count on nothing in this world except what lies between his hat and his boots. I learnt the same lesson at Eton, but alas! by conjugating not *pulso* but *vapulo*.' As I have intimated, I think that his conscience must have rather exaggerated his sins of submission; though I also cannot doubt that there was some ground for his self-humiliation. In any case, he atoned for it fully. I must add that he learnt another lesson, which, after his fashion, he refrains from avowing. The 'kicks, cuffs, and hat smashing had no other result,' says Mr. Coleridge, 'than to steel his mind for ever against oppression, tyranny, and unfairness of every kind.' How often that lesson is effectually taught by simple bullying I will not inquire. Undoubtedly Fitzjames learnt it, though he expressed himself more frequently in terms of indignation against the oppressor than of sympathy for the oppressed; but the sentiment was equally strong, and I have no doubt that it was stimulated by these acts of tyranny.

The teaching at Eton was 'wretched'; the hours irregular and very unpunctual; the classes were excessively large, and the tutorial instruction supposed to be given out of school frequently neglected. 'I do not believe,' says my brother, 'that I was ever once called upon to construe at my tutor's after I got into the fifth form.' An absurd importance, too, was already attached to the athletic amusements. Balston, our tutor, was a good scholar after the fashion of the day and famous for Latin verse;

but he was essentially a commonplace don. 'Stephen major,' he once said to my brother, 'if you do not take more pains, how can you ever expect to write good longs and shorts? If you do not write good longs and shorts, how can you ever be a man of taste? If you are not a man of taste, how can you ever hope to be of use in the world?'—a *sorites*, says my brother, which must, he thinks, be somewhere defective.

The school, however, says Fitzjames, had two good points. The boys, in the first place, were gentlemen by birth and breeding, and did not forget their home training. The simple explanation of the defects of the school was, as he remarks, that parents in this class did not care about learning; they wished their children to be gentlemen, and to be 'bold and active, and to make friends and to enjoy themselves, and most of them had their wish.'

The second good point in the school is more remarkable. 'There was,' says Fitzjames, 'a complete absence of moral and religious enthusiasm. The tone of Rugby was absolutely absent.' Chapel was simply a kind of drill. He vividly remembers a sermon delivered by one of the Fellows, a pompous old gentleman, who solemnly gave out the bidding prayer, and then began in these words, 'which ring in my ears after the lapse of more than forty years.' 'The subject of my discourse this morning, my brethren, will be the duties of the married state.' When Balston was examined before a Public Schools Commission, he gave what Fitzjames considers 'a perfectly admirable answer to one question.' He had said that the Provost and Fellows did all the preaching, and was asked whether he did not regret that he could not, as headmaster, use this powerful mode of influencing the boys? 'No,' he said; 'I was always of opinion that nothing was so important for boys as the preservation of Christian simplicity.' 'This

put into beautiful language,' says my brother, 'the truth that at Eton there was absolutely no nonsense.' The masters knew that they had 'nothing particular to teach in the way of morals or religion, and they did not try to do so.'

The merits thus ascribed to Eton were chiefly due, it seems, to the neglect of discipline and of teaching. My brother infers that good teaching at school is of less importance than is generally supposed. I shall not enter upon that question; but it is necessary to point out that whatever the merits of an entire absence of moral and religious instruction, my brother can hardly be taken as an instance. At this time the intimacy with his father, already close, was rapidly developing. On Sunday afternoons, in particular, my father used to walk to the little chapel near Cumberland Lodge, in Windsor Park, and on the way would delight in the conversations which so profoundly interested his son. The boy's mind was ripening, and he was beginning to take an interest in some of the questions of the day. It was the time of the Oxford movement, and discussions upon that topic were frequent at home. Frederick Gibbs held for a time a private tutorship at Eton while reading for a fellowship at Trinity, and brought news of what was exciting young men at the Universities. A quaint discussion recalled by my brother indicates one topic which even reached the schoolboy mind. He was arguing as to confirmation with Herbert Coleridge (1830-1861) whose promising career as a philologist was cut short by an early death. 'If you are right,' said Fitzjames, 'a bishop could not confirm with his gloves on.' 'No more he could,' retorted Coleridge, boldly accepting the position. Political questions turned up occasionally. O'Connell was being denounced as 'the most impudent of created liars,' and a belief in Free Trade

was the mark of a dangerous radical. To the Eton time my brother also refers a passionate contempt for the 'sentimental and comic' writers then popular. He was disgusted not only by their sentimentalism but by their vulgarity and their ridicule of all that he respected.

One influence, at this time, mixed oddly with that exerted by my father. My eldest brother, Herbert, had suffered from ill health, due, I believe, to a severe illness in his infancy, which had made it impossible to give him a regular education. He had grown up to be a tall, large-limbed man, six feet two-and-a-half inches in height, but loosely built, and with a deformity of one foot which made him rather awkward. The delicacy of his constitution had caused much anxiety and trouble, and he diverged from our family traditions by insisting upon entering the army. There, as I divine, he was the object of a good deal of practical joking, and found himself rather out of his element. He used to tell a story which may have received a little embroidery in tradition. He was at a ball at Gibraltar, which was attended by a naval officer. When the ladies had retired this gentleman proposed pistol shooting. After a candelabrum had been smashed, the sailor insisted upon taking a shot at a man who was lying on a sofa, and lodged a bullet in the wall just above his head. Herbert left the army about 1844 and entered at Gray's Inn. He would probably have taken to literature, and he wrote a few articles not without promise, but his life was a short one. He was much at Windsor, and the anxiety which he had caused, as well as a great sweetness and openness of temper, made him, I guess, the most tenderly loved of his parents' children. He had, however, wandered pretty widely outside the limits of the Clapham Sect. He became very intimate with Fitzjames, and they had long and frank discussions. This daring youth doubted

the story of Noah's flood, and one phrase which stuck in his brother's mind is significant. 'You,' he said, 'are a good boy, and I suppose you will go to heaven. If you can enjoy yourself there when you think of me and my like grilling in hell fire, upon my soul I don't envy you.' One other little glance from a point of view other than that of Clapham impressed the lad. He found among his father's books a copy of 'State Trials,' and there read the trial of Williams for publishing Paine's 'Age of Reason.' The extracts from Paine impressed him; though, for a time, he had an impression from his father that Coleridge and other wise men had made a satisfactory apology for the Bible; and 'in his inexperience' he thought that Paine's coarseness implied a weak case. 'There is a great deal of truth,' he says, 'in a remark made by Paine. I have gone through the Bible as a man might go through a wood, cutting down the trees. The priests can stick them in again, but they will not make them grow.' For the present such thoughts remained without result. Fitzjames was affected, he says, by the combined influence of his father and brother. He thought that something was to be said on both sides of the argument. Meanwhile the anxiety caused to his father by Herbert's unfortunately broken, though in no sense discreditable, career impressed him with a strong sense of the evils of all irregularities of conduct. He often remembered Herbert in connection with one of his odd anniversaries. 'This day eighteen years ago,' he says (September 16, 1857), 'my brother Herbert and I killed a snake in Windsor Forest. Poor dear fellow! we should have been great friends, and please God! we shall be yet.'

Meanwhile Fitzjames had done well, though not brilliantly, at school. He was eighth in his division, of which he gives the first twelve names from memory. The

first boy was Chenery, afterwards editor of the 'Times,' and the twelfth was Herbert Coleridge. With the exception of Coleridge, his cousin Arthur, and W. J. Beamont (1828–1868), who at his death was a Fellow at Trinity College, Cambridge, he had hardly any intimates. Chitty, afterwards his colleague on the Bench, was then famous as an athlete; but with athletics my brother had nothing to do. His only amusement of that kind was the solitary sport of fishing. He caught a few roach and dace, and vainly endeavoured to inveigle pike. His failure was caused, perhaps, by scruples as to the use of live bait, which led him to look up some elaborate recipes in Walton's 'Compleat Angler.' Pike, though not very intelligent, have long seen through those ancient secrets.

One of these friendships led to a characteristic little incident. In the Christmas holidays of 1844 Fitzjames was invited to stay with the father of his friend Beamont, who was a solicitor at Warrington. There could not, as I had afterwards reason to know, have been a quieter or simpler household. But they had certain gaieties. Indeed, if my memory does not deceive me, Fitzjames there made his first and only appearance upon the stage in the character of Tony Lumpkin. My father was alarmed by the reports of these excesses, and, as he was going to the Diceys, at Claybrook, wrote to my brother of his intentions. He hinted that Fitzjames, if he were at liberty, might like a visit to his cousins. Upon arriving at Rugby station he found Fitzjames upon the platform. The lad had at once left Warrington, though a party had been specially invited for his benefit, having interpreted the paternal hint in the most decisive sense. My father, I must add, was shocked by the results of his letter, and was not happy till he had put himself right with the innocent Beamonts.

Under Balston's advice Fitzjames was beginning to read for the Newcastle. Before much progress had been made in this, however, my father discovered his son's unhappiness at school. Although the deep designs of reform with which the masters seem to have credited him were purely imaginary, my father had no high opinion of Eton, and devised another scheme. Fitzjames went to the school for the last time about September 23, 1845, and then tore off his white necktie and stamped upon it. He went into the ante-chapel and scowled, he says, at the boys inside, not with a benediction. It was the close of three years to which he occasionally refers in his letters, and always much in the same terms. They were, in the main, unhappy, and, as he emphatically declared, the only unhappy years of his life, but they had taught him a lesson.

III. KING'S COLLEGE

On October 1, 1845, he entered King's College, London. Lodgings were taken for him at Highgate Hill, within a few doors of his uncle, Henry Venn. He walked the four miles to the college, dined at the Colonial Office at two, and returned by the omnibus. He was now his own master, the only restriction imposed upon him being that he should every evening attend family prayers at his uncle's house. The two years he spent at King's College were, he says, 'most happy.' He felt himself changed from a boy to a man. The King's College lads, who, indeed, called themselves 'men,' were of a lower social rank than the Etonians, and, as Fitzjames adds, unmistakably inferior in physique. Boys who had the Strand as the only substitute for the playing-fields were hardly likely to show much physical prowess. But they had qualities more important to him. They were industrious, as be-

came the sons of professional and business men. Their moral tone was remarkably good; he never knew, he says, a more thoroughly well-behaved set of lads, although he is careful to add that he does not think that in this respect Eton was bad. His whole education had been among youths 'singularly little disposed to vice or a riot in any form.' But the great change for him was that he could now find intellectual comradeship. There was a debating society, in which he first learnt to hear his own voice, and indeed became a prominent orator. He is reported to have won the surname 'Giant Grim.' His most intimate friend was the present Dr. Kitchin, Dean of Durham. The lads discussed politics and theology and literature, instead of putting down to affectation any interest outside of the river and the playing-fields. Fitzjames not only found himself in a more congenial atmosphere, but could hold his own better among youths whose standard of scholarship was less exalted than that of the crack Latin versemakers at Eton, although the average level was perhaps higher. In 1846 he won a scholarship, and at the summer examination was second in classics. In 1847 he was only just defeated for a scholarship by an elder boy, and was first, both in classics and English literature, in the examinations, besides winning a prize essay.

Here, as elsewhere, he was much interested by the theological tone of his little circle, which was oddly heterogeneous. There was, in the first place, his uncle, Henry Venn, to whom he naturally looked up as the exponent of the family orthodoxy. Long afterwards, upon Venn's death, he wrote, 'Henry Venn was the most triumphant man I ever knew.' 'I never,' he adds, 'knew a sturdier man.' Such qualities naturally commanded his respect, though he probably was not an unhesitating disciple. At King's College, meanwhile, which prided

itself upon its Anglicanism, he came under a very different set of teachers. The principal, Dr. Jelf, represented the high and dry variety of Anglicanism. I can remember how, a little later, I used to listen with wonder to his expositions of the Thirty-nine Articles. What a marvellous piece of good fortune it was, I used dimly to consider, that the Church of England had always hit off precisely the right solution in so many and such tangled controversies! But King's College had a professor of a very different order in F. D. Maurice. His personal charm was remarkable, and if Fitzjames did not become exactly a disciple he was fully sensible of Maurice's kindness of nature and loftiness of purpose. He held, I imagine, in a vague kind of way, that here might perhaps be the prophet who was to guide him across the deserts of infidelity into the promised land where philosophy and religion will be finally reconciled. Of this, however, I shall have more to say hereafter.

I must now briefly mention the changes which took place at this time in our family. In 1846 my brother Herbert made a tour to Constantinople, and on his return home was seized by a fever and died at Dresden on October 22. My father and mother had started upon the first news of the illness, but arrived too late to see their son alive. Fitzjames in the interval came to Windsor, and, as my mother records, was like a father to the younger children. The journey to Dresden, with its terrible suspense and melancholy end, was a severe blow to my father. From that time, as it seems to me, he was a changed man. He had already begun to think of retiring from his post, and given notice that he must be considered as only holding it during the convenience of his superiors.[1] He gave up the house at Windsor, having, indeed, kept it on chiefly because Herbert was fond of the place. We settled for a

[1] Macvey Napier correspondence.

time at Wimbledon. There my brother joined us in the early part of 1847. A very severe illness in the autumn of 1847 finally induced my father to resign his post. In recognition of his services he was made a privy councillor and K.C.B. His retirement was at first provisional, and, on recovering, he was anxious to be still employed in some capacity. The Government of the day considered the pension to which he was entitled an inadequate reward for his services. There was some talk of creating the new office of Assessor to the Judicial Committee of the Privy Council, to which he was to be appointed. This proved to be impracticable, but his claim was partly recognised in his appointment to succeed William Smyth (died June 26, 1849) as Regius Professor of Modern History at Cambridge.[1] I may as well mention here the later events of his life, as they will not come into any precise connection with my brother's history. The intimacy between the two strengthened as my brother developed into manhood, and they were, as will be seen, in continual intercourse. But after leaving King's College my brother followed his own lines, though for a time an inmate of our household.

The Kensington house having been let, we lived in various suburban places, and, for a time, at Cambridge. My father's professorship occupied most of his energies in later years. He delivered his first course in the May term of 1850. Another very serious illness, threatening brain fever, interrupted him for a time, and he went abroad in the autumn of 1850. He recovered, however, beyond ex-

[1] My father was sworn of H. M. Privy Council October 30, 1847, and on April 15, 1848, appointed by her Majesty in Council Member of the Committee of Privy Council for the consideration of all matters relating to trade and foreign plantations (Sir James Stephen and Sir Edward Ryan were the last two appointed under that form and title); made K.C.B. April 27, 1848, and finally retired on pension May 3, 1848, having been on sick leave since October 1847.

pectation, and was able to complete his lectures in the winter, and deliver a second course in the summer of 1851. These lectures were published in 1852 as 'Lectures on the History of France.' They show, I think, the old ability, but show also some failure of the old vivacity. My father did not possess the profound antiquarian knowledge which is rightly demanded in a professor of the present day; and, indeed, I think it is not a little remarkable that, in the midst of his absorbing work, he had acquired so much historical reading as they display. But, if I am not mistaken, the lectures have this peculiar merit —that they are obviously written by a man who had had vast practical experience of actual administrative work. They show, therefore, an unusual appreciation of the constitutional side of French history; and he anticipated some of the results set forth with, of course, far greater knowledge of the subject, in Tocqueville's 'Ancien Régime.' Tocqueville himself wrote very cordially to my father upon the subject; and the lectures have been valued by very good judges. Nothing, however, could be more depressing than the position of a professor at Cambridge at that time. The first courses delivered by my father were attended by a considerable number of persons capable of feeling literary curiosity—a class which was then less abundant than it would now be at Cambridge. But he very soon found that his real duty was to speak to young gentlemen who had been driven into his lecture-room by well-meant regulations; who were only anxious to secure certificates for the 'poll' degree, and whose one aim was to secure them on the cheapest possible terms. To candidates for honours, the history school was at best a luxury for which they could rarely spare time, and my father had to choose between speaking over the heads of his audience and giving milk and water to babes. The

society of the Cambridge dons in those days was not much to his taste, and he soon gave up residence there.

About the beginning of 1853 he took a house in Westbourne Terrace, which became his headquarters. In 1855 he accepted a professorship at Haileybury, which was then doomed to extinction, only to hold it during the last three years of the existence of the college. These lectures sufficiently occupied his strength, and he performed them to the best of his ability. The lectures upon French history were, however, the last performance which represented anything like his full powers.

IV. CAMBRIDGE

In October 1847 my brother went into residence at Trinity College, Cambridge. 'My Cambridge career,' he says, 'was not to me so memorable or important a period of life as it appears to some people.' He seems to have extended the qualification to all his early years. 'Few men,' he says, 'have worked harder than I have for the last thirty-five years, but I was a very lazy, unsystematic lad up to the age of twenty-two.' He would sometimes speak of himself as 'one of a slowly ripening race,' and set little value upon the intellectual acquirements attained during the immature period. Yet I have sufficiently shown that in some respects he was even exceptionally developed. From his childhood he had shared the thoughts of his elders; he had ceased to be a boy when he had left Eton at sixteen; and he came up to Cambridge far more of a grown man than nine in ten of his contemporaries. So far, indeed, as his character was concerned, he had scarcely ever been a child: at Cambridge, as at Eton, he regarded many of the ambitions of

his contemporaries as puerile. Even the most brilliant undergraduates are sometimes tempted to set an excessive value upon academical distinction. A senior wranglership appears to them to be the culminating point of human glory, instead of the first term in the real battle of life. Fitzjames, far from sharing this delusion, regarded it, perhaps, with rather too much contempt. His thoughts were already upon his future career, and he cared for University distinctions only as they might provide him with a good start in the subsequent competition. But this marked maturity of character did not imply the possession of corresponding intellectual gifts, or, as I should rather say, of such gifts as led to success in the Senate House. Fitzjames had done respectably at Eton, and had been among the first lads at King's College. He probably came up to Cambridge with confidence that he would make a mark in examinations. But his mind, however powerful, was far from flexible. He had not the intellectual docility which often enables a clever youth to surpass rivals of much greater originality—as originality not unfrequently tempts a man outside the strait and narrow path which leads to the maximum of marks. 'I have always found myself,' says Fitzjames, in reference to his academical career, 'one of the most unteachable of human beings. I cannot, to this day, take in anything at second hand. I have in all cases to learn whatever I want to learn in a way of my own. It has been so with law, with languages, with Indian administration, with the machinery I have had to study in patent cases, with English composition—in a word, with everything whatever.' For other reasons, however, he was at a disadvantage. He not only had not yet developed, but he never at any time possessed, the intellectual qualities most valued at Cambridge.

The Cambridge of those days had merits, now more likely to be overlooked than overvalued. The course was fitted to encourage strenuous masculine industry, love of fair play, and contempt for mere showy displays of cleverness. But it must be granted that it was strangely narrow. The University was not to be despised which could turn out for successive senior wranglers from 1840 to 1843 such men as Leslie Ellis, Sir George Stokes, Professor Cayley, and Adams, the discoverer of Neptune, while the present Lord Kelvin was second wrangler and first Smith's prizeman in 1845. During the same period the great Latin scholar, Munro (1842), and H. S. Maine (1844), were among the lights of the Classical Tripos. But, outside of the two Triposes, there was no career for a man of any ability. To parody a famous phrase of Hume's, Cambridge virtually said to its pupils, 'Is this a treatise upon geometry or algebra? No. Is it, then, a treatise upon Greek or Latin grammar, or on the grammatical construction of classical authors? No. Then commit it to the flames, for it contains nothing worth your study.' Now, in both these arenas Fitzjames was comparatively feeble. He read classical books, not only at Cambridge but in later life, when he was pleased to find his scholarship equal to the task of translating. But he read them for their contents, not from any interest in the forms of language. He was without that subtlety and accuracy of mind which makes the born scholar. He was capable of blunders surprising in a man of his general ability; and every blunder takes away marks. He was still less of a mathematician. 'I disliked,' as he says himself, 'and foolishly despised the studies of the place, and did not care about accurate classical scholarship, in which I was utterly wrong. I was clumsy at calculation, though I think I have, and always have had, a good head

for mathematical principles; and I utterly loathed examinations, which seem to me to make learning all but impossible.'

A letter from his friend, the Rev. H. W. Watson, second wrangler in 1850, who was a year his senior, has given me a very interesting account of impressions made at this time. The two had been together at King's College. Fitzjames's appearance at Trinity was, writes Mr. Watson, 'an epoch in my college life. A close intimacy sprung up between us, and made residence at Cambridge a totally different thing from what it had been in my first year. Your brother's wide culture, his singular force of character, his powerful but, at that time, rather unwieldy intellect, his Johnsonian brusqueness of speech and manner, mingled with a corresponding Johnsonian warmth of sympathy with and loyalty to friends in trouble or anxiety, his sturdiness in the assertion of his opinions, and the maintenance of his principles, disdaining the smallest concession for popularity's sake . . . all these traits combined in the formation of an individuality which no one could know intimately and fail to be convinced that only time was wanting for the achievement of no ordinary distinction.' 'Yet,' says Mr. Watson, 'he was distanced by men immeasurably his inferiors.' Nor can this, as Mr. Watson rightly adds, be regarded as a condemnation of the system rather than of my brother. 'I attempted to prepare him in mathematics, and the well-known Dr. Scott, afterwards headmaster of Westminster, was his private tutor in classics; and we agreed in marvelling at and deploring the hopelessness of our tasks. For your brother's mind, acute and able as it was in dealing with matters of concrete human interest, seemed to lose grasp of things viewed purely in the abstract, and positively refused to work upon questions of grammatical

rules and algebraical formulæ.' When they were afterwards fellow-students for a short time in law, Mr. Watson remarked in Fitzjames a similar impatience of legal technicalities. He thinks that the less formal system at Oxford might have suited my brother better. At that time, however, Cambridge was only beginning to stir in its slumbers. The election of the Prince Consort to the Chancellorship in 1847 (my brother's first year of residence) had roused certain grumblings as to the probable 'Germanising' of our ancient system; and a beginning was made, under Whewell's influence, by the institution of the 'Moral Sciences' and 'Natural Sciences' Triposes in 1851. The theory was, apparently, that, if you ask questions often enough, people will learn in time to answer them. But for the present they were regarded as mere 'fancy' examinations. No rewards were attainable by success; and the ambitious undergraduates kept to the ancient paths.

I may as well dispose here of one other topic which seems appropriate to University days. Fitzjames cared nothing for the athletic sports which were so effectually popularised soon afterwards in the time of 'Tom Brown's School Days.' Athletes, indeed, cast longing eyes at his stalwart figure. One eminent oarsman persuaded my brother to take a seat in a pair-oared boat, and found that he could hardly hold his own against the strength of the neophyte. He tried to entice so promising a recruit by offers of a place in the 'Third Trinity' crew and ultimate hopes of a 'University Blue.' Fitzjames scorned the dazzling offer. I remember how Ritson, the landlord at Wastdale Head, who had wrestled with Christopher North, lamented in after years that Fitzjames had never entered the ring. He spoke in the spirit of the prize-fighter who said to Whewell, 'What a man was lost when they made

you a parson!' His only taste of the kind was his hereditary love of walking. His mother incidentally observes in January 1846, that he has accomplished a walk of thirty-three miles; and in later days that was a frequent allowance. Though not a fast walker, he had immense endurance. He made several Alpine tours, and once (in 1860) he accompanied me in an ascent of the Jungfrau with a couple of guides. He was fresh from London; we had passed a night in a comfortless cave; the day was hot, and his weight made a plod through deep snow necessarily fatiguing. We reached the summit with considerable difficulty. On the descent he slipped above a certain famous bergschrund; the fall of so ponderous a body jerked me out of the icy steps, and our combined weight dragged down the guides. Happily the bergschrund was choked with snow, and we escaped with an involuntary slide. As we plodded slowly homewards, we expected that his exhaustion would cause a difficulty in reaching the inn. But by the time we got there he was, I believe, the freshest of the party. I remember another characteristic incident of the walk. He began in the most toilsome part of the climb to expound to me a project for an article in the 'Saturday Review.' I consigned that journal to a fate which I believe it has hitherto escaped. But his walks were always enjoyed as opportunities for reflection. Occasionally he took a gun or a rod, and I am told was not a bad shot. He was, however, rather inclined to complain of the appearance of a grouse as interrupting his thoughts. In sport of the gambling variety he never took the slightest interest; and when he became a judge, he shocked a Liverpool audience by asking in all simplicity, 'What is the "Grand National"?' That, I understand, is like asking a lawyer, What is a *Habeas Corpus*? He was never seized with the athletic or sporting mania, much

as he enjoyed a long pound through pleasant scenery. In this as in some other things he came to think that his early contempt for what appeared to be childish amusements had been pushed rather to excess.

I return to Cambridge. My brother knew slightly some of the leading men of the place. The omniscient Whewell, who concealed a warm heart and genuine magnanimity under rather rough and overbearing manners, had welcomed my father very cordially to Cambridge and condescended to be polite to his son. But the gulf which divided him from an undergraduate was too wide to allow the transmission of real personal influence. Thompson, Whewell's successor in the mastership, was my brother's tutor. He is now chiefly remembered for certain shrewd epigrams; but then enjoyed a great reputation for his lectures upon Plato. My brother attended them; but from want of natural Platonism or for other reasons failed to profit by them, and thought the study was sheer waste of time. Another great Cambridge man of those days, the poetical mathematician, Leslie Ellis, was kind to my brother, who had an introduction to him probably from Spedding. Ellis was already suffering from the illness which confined him to his room at Trumpington, and prevented him from ever giving full proofs of intellectual powers, rated by all who knew him as astonishing. I may quote what Fitzjames says of one other contemporary, the senior classic of his own year: 'Lightfoot's reputation for accuracy and industry was unrivalled; but it was not generally known what a depth of humour he had or what general force of character.' Lightfoot's promotion to the Bishopric of Durham removed him, as my brother thought, from his proper position as a teacher; and he suffered 'under the general decay of all that belongs to theology.'

I do not find, however, that Lightfoot had any marked influence upon Fitzjames.

The best thing that the ablest man learns at college, as somebody has said, is that there are abler men than himself. My brother became intimate with several very able men of his own age, and formed friendships which lasted for life. He met them especially in two societies, which influenced him as they have influenced many men destined to achieve eminence. The first was the 'Union.' There his oratory became famous. The 'Gruffian' and 'Giant Grim' was now known as the 'British Lion'; and became, says Mr. Watson, 'a terror to the shallow and wordy, and a merciless exposer of platitudes and shams.' Mr. Watson describes a famous scene in the October term of 1849 which may sufficiently illustrate his position. 'There was at that time at Trinity a cleverish, excitable, worthy fellow whose mind was a marvellous mixture of inconsistent opinions which he expounded with a kind of oratory as grotesque as his views.' Tradition supplies me with one of his flowers of speech. He alluded to the clergy as 'priests sitting upon their golden middens and crunching the bones of the people.' These oddities gave my brother irresistible opportunities for making fun of his opponent. 'One night his victim's powers of endurance gave way. The scene resembled the celebrated outburst of Canning when goaded by the invectives of Brougham. The man darted across the room with the obvious intention of making a physical onslaught, and then, under what impulse and with what purpose I do not know, the whole meeting suddenly flashed into a crowd of excited, wrangling boys. They leapt upon the seats, climbed upon the benches, vociferated and gesticulated against each other, heedless of the fines and threats of the bewildered President, and altogether reproduced a scene of the French

revolutionary Assembly.' Mr. Llewelyn Davies was the unfortunate President on this occasion, and mentions that my brother commemorated the scene in a 'heroic ballad' which has disappeared.

From the minutes of the Society[1] 'I learn further details of this historic scene. The debate (November 27, 1849) arose upon a motion in favour of Cobden. His panegyrist made 'such violent interruptions' that a motion was made for his expulsion, but carried by an insufficient majority. Another orator then 'became unruly' and was expelled by a superabundant majority, while the original mover was fined 2*l*. The motion was then unanimously negatived, 'the opener not being present to reply.' From the records of other debates I learn that Fitzjames was in favour of the existing Church Establishment as against advocates of change, whether high churchmen or liberationists. He also opposed motions for extension of the suffrage, without regard to education or property, moved by Sir W. Harcourt. He agrees, however, with Harcourt in condemning the game laws. His most characteristic utterance was when the admirer of Cobden had moved that 'to all human appearance we are warranted in tracing for our own country through the dim perspective of coming time an exalted and glorious destiny.' Fitzjames moved as an amendment 'that the House, while it acknowledges the many dangers to which the country is exposed, trusts that through the help of God we may survive them.' This amendment was carried by 60 to 0.

The other society was one which has included a very remarkable number of eminent men. In my undergraduate days we used to speak with bated breath of the

[1] Kindly sent to me by Mr. Montague Butler, of Pembroke College, Cambridge

'Apostles'—the accepted nickname for what was officially called the Cambridge Conversazione Society. It was founded about 1820, and had included such men as Tennyson (who, as my brother reports, had to leave the Society because he was too lazy to write an essay), the two younger Hallams, Maurice, Sterling, Charles Buller, Arthur Helps, James Spedding, Monckton Milnes, Tom Taylor, Charles Merivale, Canon Blakesley, and others whom I shall have to mention. The existence of a society intended to cultivate the freest discussion of all the great topics excited some suspicion when, about 1834, there was a talk of abolishing tests. It was then warmly defended by Thirlwall, the historian, who said that many of its members had become ornaments of the Church.[1]

But the very existence of this body was scarcely known to the University at large; and its members held reticence to be a point of honour. You might be aware that your most intimate friend belonged to it: you had dimly inferred the fact from his familiarity with certain celebrities, and from discovering that upon Saturday evenings he was always mysteriously engaged. But he never mentioned his dignity; any more than at the same period a Warrington would confess that he was a contributor to the leading journals of the day. The members were on the look-out for any indications of intellectual originality, academical or otherwise, and specially contemptuous of humbug, cant, and the qualities of the 'windbag' in general. To be elected, therefore, was virtually to receive a certificate from some of your cleverest contemporaries that they regarded you as likely to be in future an eminent man. The judgment so passed was perhaps as significant as that implied by University honours, and a very large

[1] See an article by W. D. Christie in *Macmillan's Magazine* for November 1864.

proportion of the apostles have justified the anticipations of their fellows.

My brother owed his election at an unusually early period of his career to one of the most important friendships of his life. In the summer vacation of 1845 F. W. Gibbs was staying at Filey, reading for the Trinity Fellowship, which he obtained in the following October. Fitzjames joined him, and there met Henry Sumner Maine, who had recently (1844) taken his degree at Cambridge, when he was not only 'senior classic' but a senior classic of exceptional brilliancy. Both Maine and Gibbs were apostles and, of course, friends. My brother's first achievement was to come near blowing out his new friend's brains by the accidental discharge of a gun. Maine happily escaped, and must have taken a liking to the lad. In 1847 Maine was appointed to the Regius Professorship of Civil Law in Cambridge. The study which he was to teach had fallen into utter decay. Maine himself cannot at that time have had any profound knowledge of the Civil Law—if, indeed, he ever acquired such knowledge. But his genius enabled him to revive the study in England—although no genius could galvanise the corpse of legal studies at the Cambridge of those days into activity. Maine, as Fitzjames says, 'made in the most beautiful manner applications of history and philosophy to Roman law, and transfigured one of the driest of subjects into all sorts of beautiful things without knowing or caring much about details.' He was also able to 'sniff at Bentham' for his ignorance in this direction. 'I rebelled against Maine for many years,' says Fitzjames, 'till at last I came to recognise, not only his wonderful gifts, but the fact that at bottom he and I agreed fundamentally, though it cost us both a good deal of trouble to find it out.' I quote this because it bears

upon my brother's later development of opinion. For the present, the personal remark is more relevant. Maine, says Fitzjames, 'was perfectly charming to me at college, as he is now. He was most kind, friendly, and unassuming; and, though I was a freshman and he a young don,[1] and he was twenty-six when I was twenty—one of the greatest differences of age and rank which can exist between two people having so much in common—we were always really and effectually equal. We have been the closest of friends all through life.' I think, indeed, that Maine's influence upon my brother was only second to that of my father.

Maine brought Fitzjames into the apostles in his first term.[2] Maine, says my brother, 'was a specially shining apostle, and in all discussions not only took by far the first and best part, but did it so well and unpretentiously, and in a strain so much above what the rest of us could reach, that it was a great piece of education to hear him.' Other members of the little society, which generally included only five or six—the name 'apostles' referring to the limit of possible numbers—were E. H. Stanley (afterwards Lord Derby), who left in March 1848, Vernon Harcourt (now Sir William), H. W. Watson, Julian Fane,[3] and the present Canon Holland. Old members—Monckton Milnes, James Spedding, Henry Fitzmaurice Hallam, and W. H. Thompson (the tutor)—occasionally attended meetings. The late Professor Hort and the great physicist, Clerk Maxwell, joined about the time of my brother's departure. He records one statement

[1] Maine was born August 22, 1822, and therefore six years and a half older than Fitzjames.

[2] He was proposed by Maine on October 30, and elected November 13, 1847.

[3] *The Life of Julian Fane*, by his intimate friend Lord Lytton, was published in 1871. It includes some account of the 'apostles.'

of Maxwell's which has, I suspect, been modified in transmission. The old logicians, said Maxwell, recognised four forms of syllogism. Hamilton had raised the number to 7, but he had himself discovered 135. This, however, mattered little, as the great majority could not be expressed in human language, and even if expressed were not susceptible of any meaning.

This specimen would give a very inaccurate notion of the general line of discussion. By the kindness of Professor Sidgwick, I am enabled to give some specimens of the themes supported by my brother, which may be of interest, not merely in regard to him, but as showing what topics occupied the minds of intelligent youths at the time. The young gentlemen met every Saturday night in term time and read essays. They discussed all manner of topics. Sometimes they descended to mere commonplaces—Is a little knowledge a dangerous thing? Is it possible *ridentem dicere verum*? (which Fitzjames is solitary in denying)—but more frequently they expatiate upon the literary, poetical, ethical, and philosophical problems which can be answered so conclusively in our undergraduate days. Fitzjames self-denyingly approves of the position assigned to mathematics at Cambridge. In literary matters I notice that he does not think the poetry of Byron of a 'high order'; that he reads some essays of Shelley, which are unanimously voted 'unsatisfactory'; that he denies that Tennyson's 'Princess' shows higher powers than the early poems (a rather ambiguous phrase); that he considers Adam, not Satan, to be the hero of 'Paradise Lost'; and, more characteristically, that he regards the novels of the present day as 'degenerate,' and, on his last appearance, maintains the superiority of Miss Austen's 'Emma' to Miss Brontë's 'Jane Eyre.' 'Jane Eyre' had then, I remember, some

especially passionate admirers at Cambridge. His philosophical theories are not very clear. He thinks, like some other people, that Locke's chapter on 'Substance' is 'unsatisfactory'; and agrees with some 'strictures' on the early chapters of Mill's 'Political Economy.' He writes an essay to explode the poor old social contract. He holds that the study of metaphysics is desirable, but adds the note, 'not including ontological inquiries under the head of metaphysics.' He denies, however, the proposition that 'all general truths are founded on experience.' He thinks that a meaning can be attached to the term 'freewill'; but considers it impossible 'to frame a satisfactory hypothesis as to the origin of evil.' Even the intellect of the apostles had its limits. His ethical doctrines seem to have inclined to utilitarianism. The whole society (four members present) agrees that the system of expediency, 'so far from being a derogation from the moral dignity of man, is the only method consistent with the conditions of his action.' He is neutral upon the question whether 'self-love is the immediate motive of all our actions,' and considers that question unmeaning, 'as not believing it possible that a man should be at once subject and object.' He writes an essay to show that there is no foundation 'for a philosophy of history in the analogy between the progressive improvement of mankind and that of which individuals are capable,' and he holds (in opposition to Maine) that Carlyle is a 'philosophic historian.' The only direct reference to contemporary politics is characteristic. Fane had argued that 'some elements of socialism' should be 'employed in that reconstruction of society which the spirit of the age demands.' Maine agrees, but Fitzjames denies that any reconstruction of society is needed.

Theological discussions abound. Fitzjames thinks that

there are grounds independent of revelation for believing in the goodness and unity of an intelligent First Cause. He reads an essay to prove that we can form a notion of inspiration which does not involve dictation. He thinks it 'more agreeable to right reason' to explain the Biblical account of the creation by literal interpretation than 'on scientific principles,' but adds the rider, 'so far as it can be reconciled with geological facts.' He denies that the Pentateuch shows 'traces of Egyptian origin.' He thinks that Paley's views of the 'essential doctrines of Christianity' are insufficient. He approves the 'strict observance of the Sabbath in England,' but notes that he does not wish to 'confound the Christian Sunday with the Jewish Sabbath.'

The instinct which leads a young man to provide himself with a good set of dogmatic first principles is very natural; and the free and full discussion of them with his fellows, however crude their opinions may be, is among the very best means of education. I need only remark that the apostles appear to have refrained from discussion of immediate politics, and to have been little concerned in some questions which were agitating the sister University. They have nothing to say about Apostolical Succession and the like; nor are there any symptoms of interest in German philosophy, which Hamilton and Mansel were beginning to introduce. At Cambridge the young gentlemen are content with Locke and Mill; and at most know something of Coleridge and Maurice. Mr. Watson compares these meetings to those at Newman's rooms in Oxford as described by Mark Pattison. There a luckless advocate of ill-judged theories might be crushed for the evening by the polite sentence, *Very likely*. At the Cambridge meetings, the trial to the nerves, as Mr. Watson thinks, was even more severe.

There was not the spell of common reverence for a great man, in whose presence a modest reticence was excusable. You were expected to speak out, and failure was the more appalling. The contests between Stephen and Harcourt were especially famous. Though, says Mr. Watson, your brother was 'not a match in adroitness and chaff' for his great 'rival,' he showed himself at his best in these struggles. 'The encounters were veritable battles of the gods, and I recall them after forty years with the most vivid recollection of the pleasure they caused.' When Sir William Harcourt entered Parliament, my brother remarked to Mr. Llewelyn Davies, 'It does not seem to be in the natural order of things that Harcourt should be in the House and I not there to criticise him.'

Fitzjames's position in regard both to theology and politics requires a little further notice. At this time my brother was not only a stern moralist, but a 'zealous and reverential witness on behalf of dogma, and that in the straitest school of the Evangelicals.' Mr. Watson mentions the death at college of a fellow-student during the last term of my brother's residence. In his last hours the poor fellow confided to his family his gratitude to Fitzjames for having led him to think seriously on religious matters. I find a very minute account of this written by my brother at the time to a common friend. He expresses very strong feeling, and had been most deeply moved by his first experience of a deathbed; but he makes no explicit reflections. Though decidedly of the evangelical persuasion at this period, and delighting in controversy upon all subjects, great and small, his intense aversion to sentimentalism was not only as marked as it ever became, but even led to a kind of affectation of prosaic matter of fact stoicism, a rejection

of every concession to sentiment, which he afterwards regarded as excessive.

The impression made upon him by contemporary politics was remarkable. The events of 1848 stirred all young men in one way or the other; and although the apostles were discussing the abstract problems of freewill and utilitarianism, they were no doubt keenly interested in concrete history. No one was more moved than Fitzjames. He speaks of the optimistic views which were popular with the Liberals after 1832, expounded by Cobden and Bright and supposed to be sanctioned by the Exhibition of 1851. It was the favourite cant that Captain Pen 'had got the best of Captain Sword, and that henceforth the kindly earth would slumber, lapt in universal law. I cannot say how I personally loathed this way of thinking, and how radically false, hollow and disgusting it seemed to me then, and seems to me now.' The crash of 1848 came like a thunderbolt, and 'history seemed to have come to life again with all its wild elemental forces.' For the first time he was aware of actual war within a small distance, and the settlement of great questions by sheer force. 'How well I remember my own feelings, which were, I think, the feelings of the great majority of my age and class, and which have ever since remained in me as strong and as unmixed as they were in 1848. I feel them now (1887) as keenly as ever, though the world has changed and thinks and feels, as it seems, quite differently. They were feelings of fierce, unqualified hatred for the revolution and revolutionists; feelings of the most bitter contempt and indignation against those who feared them, truckled to them, or failed to fight them whensoever they could and as long as they could: feelings of zeal against all popular aspirations and in favour of all established institutions whatever their various defects or harshnesses (which,

however, I wished to alter slowly and moderately) : in a word, the feelings of a scandalised policeman towards a mob breaking windows in the cause of humanity. I should have liked first to fire grapeshot down every street in Paris, till the place ran with blood, and next to try Louis Philippe and those who advised him not to fight by court martial, and to have hanged them all as traitors and cowards. The only event in 1848 which gave me real pleasure was the days of June, when Cavaignac did what, if he had been a man or not got into a fright about his soul, or if he had had a real sense of duty instead of a wretched consciousness of weakness and a false position, Louis Philippe would have done months before.' He cannot, he admits, write with calmness to this day of the king's cowardice; and he never passed the Tuileries in later life without feeling the sentiment about Louis XVI. and his 'heritage splendid' expressed by Thackeray's drummer, 'Ah, shame on him, craven and coward, that had not the heart to defend it!'

'I have often wondered,' adds Fitzjames, 'at my own vehement feelings on these subjects, and I am not altogether prepared to say that they are not more or less foolish. I have never seen war. I have never heard a shot fired in anger, and I have never had my courage put to any proof worth speaking of. Have I any right to talk of streets running with blood? Is it not more likely that, at a pinch, I might myself run in quite a different direction? It is one of the questions which will probably remain unanswered for ever, whether I am a coward or not. But that has nothing really to do with the question. If I am a coward, I am contemptible: but Louis Philippe was a coward and contemptible whether I am a coward or not; and my feelings on the whole of this subject are, at all events, perfectly sincere, and are

the very deepest and most genuine feelings I have.' Fitzjames's only personal experience of revolutionary proceedings was on the famous 10th of April, when he was in London, but saw only special constables. The events of the day confirmed him in the doctrine that every disorganised mob is more likely to behave in the spirit of the lowest and most contemptible units than in the spirit of what is highest in them.

I can only add one little anecdote of those days. A friend of my brother's rushed into his rooms obviously to announce some very exciting piece of news. Is the mob triumphant in Paris? 'I don't know,' was the reply, 'but a point has been decided in the Gorham case.' Good evangelical as Fitzjames then was, he felt that there were more important controversies going on than squabbles over baptismal regeneration. A curious set of letters written in his first vacation to his friend Dr. Kitchin show, however, that he then took an eager interest in this doctrine. He discusses it at great length in the evangelical sense, with abundant quotations of texts.

While interested in these matters, winning fame at the Union and enjoying the good opinion of the apostles, Fitzjames was failing in a purely academical sense. He tried twice for a scholarship at Trinity, and both times unsuccessfully, though he was not very far from success. The failure excluded him, as things then were, from the possibility of a fellowship, and a degree became valueless for its main purpose. He resolved, therefore, to go abroad with my father, who had to travel in search of health. He passed the winter of 1850–1 in Paris, where he learnt French, and attended sittings of the Legislative Assembly, and was especially interested by proceedings in the French law-courts. He kept the May term of 1851 at Cambridge, and went out in the 'Poll.' Judging from the performances

of his rivals, he would probably have been in the lower half of the first class in the Classical Tripos. Although his last months at Cambridge were not cheering, he retained a feeling for the place very unlike his feeling towards Eton. He had now at least found himself firmly on his own legs, measured his strength against other competitors, and made lasting friendships with some of the strongest. It had been, he says, 'my greatest ambition to get a fellowship at Trinity, but I got it at last, however, for I was elected an honorary Fellow in the autumn of 1885. I have had my share of compliments, but I never received one which gave me half so much pleasure.' He visited Cambridge in later years and was my guest, and long afterwards the guest of his friend Maine, at certain Christmas festivities in Trinity Hall. He speaks in the warmest terms of his appreciation of the place, 'old and dignified, yet fresh and vigorous.' Nearly his last visit was in the autumn of 1885, when he gave a dinner to the apostles, of whom his son James was then a member.

Fitzjames's friends were naturally surprised at his throwing up the game. Most of them set, as I have intimated, a higher value upon academical honours, considered by themselves, than he ever admitted to be just. Possibly they exaggerated a little the disgust which was implied by his absolute abandonment of the course. And yet, I find the impression among those who saw most of him at the time, that the disappointment was felt with great keenness. The explanation is given, I think, in some remarks made by my father to Mr Watson. My father held that the University system of distributing honours was very faulty. Men, he said, wanted all the confidence they could acquire in their own powers for the struggle of life. Whatever braced and stimulated self-reliance was good. The honour system encouraged the few who succeeded

and inflicted upon the rest a 'demoralising sense of failure.' I have no doubt that my father was, in fact, generalising from the case of Fitzjames. What really stung the young man was a more or less dim foreboding of the difficulties which were to meet him in the world at large. He was not one of the men fitted for easy success. The successful man is, I take it, the man with an eye for the line of least resistance. He has an instinct, that is, for the applying his strength in the direction in which it will tell most. And he has the faculty of so falling in with other men's modes of thinking and feeling that they may spontaneously, if unconsciously, form a band of supporters. Obstacles become stepping-stones to such men. It was Fitzjames's fate through life to take the bull by the horns; to hew a path through jungles and up steep places along the steepest and most entangled routes; and to shoulder his way by main strength and weight through a crowd, instead of contriving to combine external pressures into an agency for propulsion. At this time, the contrast between his acceptance with the ablest of his contemporaries in private and his inability to obtain the public stamp of merit perplexed and troubled him. Maine and Thompson could recognise his abilities. Why could not the examiners? Might not his ambition have to struggle with similar obstacles at the bar or in the pulpit?

I quote from a letter written by my father during Fitzjames's academical career to show what was the relation at this time between the two men. My father dictates to my mother a letter to Fitzjames, dated January 19, 1849.[1] 'You well know,' he says, 'that I have long since surmounted that paternal ambition which might have led me to thirst for your eminence as a scholar.

[1] It refers, I suppose, to the son's failure to get into the first class in the college examination at Christmas 1848.

It has not pleased God to give you that kind of bodily constitution and mental temperament which is essential to such success.' He proceeds to say that, although success in examinations is 'not essential to the great ends of Fitzjames's existence, it is yet very desirable that he should become a good scholar from higher motives—such,' he adds, 'as are expounded in Bacon's "De Augmentis."' He solemnly recommends regular prayer for guidance in studies for which the lower motives may be insufficient. It then occurs to my mother that the advice may be a little discouraging. 'I am reminded by my amanuensis that I have left you in the dark as to my opinion of your probable success in the literary labours to which I have exhorted you. You must be a very mole if the darkness be real. From your childhood to this day I have ever shown you by more than words how high an estimate I entertain both of the depth and the breadth of your capacity. I have ever conversed with you as with a man, not as with a child; and though parental partiality has never concealed from me the fact of your deficiency in certain powers of mind which are essential to early excellence in learning, yet I have never been for a moment distrustful of your possessing an intellect which, if well disciplined and well cultured, will continue to expand, improve, and yield excellent fruit long after the mental faculties of many of your more fortunate rivals will have passed from their full maturity into premature decay. Faith in yourself (which is but one of the many forms of faith in God) is the one thing needful to your intellectual progress; and if your faith in yourself may but survive the disappointment of your academical ambition, that disappointment will be converted into a blessing.'

The letter shows, I think, under the rather elaborate phraseology, both the perspicuity with which the father

had estimated his son's talents and the strong sympathy which bound them together. The reference to Fitzjames's 'want of faith in himself' is significant. If want of faith is to be measured by want of courage in tackling the difficulties of life, no man could be really less open to the charge than Fitzjames. But my father, himself disposed to anticipate ill fortune, had certain reasons for attributing to his son a tendency in the same direction. Fitzjames's hatred of all exaggeration, his resolute refusal to be either sentimental or optimistic, led him to insist upon the gloomy side of things. Moreover, he was still indolent; given to be slovenly in his work, and rather unsocial in his ways, though warmly attached to a few friends. My father, impressed by these symptoms, came to the conclusion that Fitzjames was probably unsuited for the more active professions for which a sanguine temper and a power of quickly attaching others are obvious qualifications. He therefore looked forward to his son's adoption of the clerical career, which his own deep piety as well as his painful experience of official vexations had long made him regard as the happiest of all careers. Circumstances strengthened this feeling. My father's income had been diminished by his resignation, while the education of his two sons became more expensive, and he had to contribute to the support of his brother George. No human being could have made us feel more clearly that he would willingly give us his last penny or his last drop of blood. But he was for a time more than usually vexed and anxious; and the fact could not be quite concealed.

Fitzjames's comparative failure at Cambridge suggests to him a significant remark. After speaking of his 'unteachableness,' he observes that his mind was over-full of thoughts about religion, about politics, about morals.

about metaphysics, about all sorts of subjects, except art, literature, or physical science. For art of any kind I have never cared, and do not care in the very least. For literature, as such, I care hardly at all. I like to be amused and instructed on the particular things I want to know; but works of genius, as such, give me very little pleasure, and as to the physical sciences, they interest me only so far as they illustrate the true method of inquiry. They, or rather some of them, have the advantage of being particularly true, and so a guide in the pursuit of moral and distinctively human truth. For their own sake, I care very little about them.'

V. READING FOR THE BAR

My brother had definitely to make the choice of a profession upon which he had been reflecting during his college career. He set about the task in an eminently characteristic way. When he had failed in the last scholarship examination, he sat down deliberately and wrote out a careful discussion of the whole question. The result is before me in a little manuscript book, which Fitzjames himself re-read and annotated in 1865, 1872, and 1880. He read it once more in 1893. Both text and commentary are significant. He is anxious above all things to give plain, tangible reasons for his conduct. He would have considered it disgraceful to choose from mere impulse or from any such considerations as would fall under the damnatory epithet 'sentimental.' He therefore begins in the most prosaic fashion by an attempt to estimate the pecuniary and social advantages of the different courses open to him. These are in reality the Church and the Bar; although, by way of exhibiting the openness of his mind, he adds a more perfunctory discussion of the merits of

the medical profession. Upon this his uncle, Henry Venn, had made a sufficient comment. 'There is a providential obstacle,' he said, 'to your becoming a doctor—you have not humbug enough.' The argument from these practical considerations leads to no conclusion. The main substance of the discussion is therefore a consideration of the qualities requisite for the efficient discharge of clerical or legal duties. A statement of these qualities, he says, will form the major of his syllogism. The minor will then be, 'I possess or do not possess them'; and the conclusion will follow, 'I ought to be a clergyman or a lawyer.' Although it is easy to see that the 'major' is really constructed with a view to its applicability to his own character, he does not explicitly give any opinions about himself. He digested the results of the general discussions into thirteen questions which are not stated, though it is clear that they must have amounted to asking, Have I the desirable aptitudes? He has, however, elaborately recorded his answers, 'Yes' or 'No,' and noted the precise time and place of answering and the length of time devoted to considering each. He began the inquiry on June 16, 1850. On September 23 he proceeds to answer the questions which he, acting (as he notes) as judge, had left to himself as jury. Questions 1 and 2 can be answered 'immediately'; but No. 3 takes two hours. The 8th, 9th, and 10th were considered together, and are estimated to have taken an hour and a half, between 7 and 11.30 P.M.; though, as he was in an omnibus for part of the time and there fell asleep, this must be conjectural. The 13th question could not be answered at all; but was luckily not important. He had answered the 11th and 12th during a railway journey to Paris on October 2, and had thereupon made up his mind.

One peculiarity of this performance is the cramped and tortuous mode of expressing himself. His thoughts are

entangled, and are oddly crossed by phrases clearly showing the influence of Maurice and Coleridge, and, above all, of his father. 'Maurice's books,' he notes in 1865, 'did their utmost to make me squint intellectually about this time, but I never learnt the trick.' A very different writer of whom he read a good deal at college was Baxter, introduced to him, I guess, by one of his father's essays. 'What a little prig I was when I made all these antitheses!' he says in 1865. 'I learnt it of my daddy' is the comment of 1880. 'Was any other human being,' he asks in 1880, 'ever constructed with such a clumsy, elaborate set of principles, setting his feelings going as if they were clockwork?' This is the comment upon a passage where he has twisted his thoughts into a cumbrous and perfectly needless syllogism. He makes a similar comment on another passage in 1865, but 'I think,' he says in 1880, 'that I was a heavy old man thirty years ago. Fifteen years ago I was at the height of my strength. I am beginning to feel now a little more tolerant towards the boy who wrote this than the man who criticised it in 1865; but he was quite right.' The critic of 1865, I may note, is specially hard upon the lad of 1850 for his ignorance of sound utilitarian authorities. He writes against an allusion to Hobbes, 'Ignorant blasphemy of the greatest of English philosophers!' The lad has misstated an argument from ignorance of Bentham and Austin. 'I had looked at Bentham at the period (says 1865), but felt a holy horror of him.' Harcourt, it is added, 'used to chaff me about him.' 1880 admits that '1865, though a fine fellow, was rather too hot in his Benthamism; 1880 takes it easier, and considers that 1850 was fairly right, and that his language if not pharisaically accurate, was plain enough for commonsense purposes.' In fact, both critics admit, and I fully agree with them, that under all the crabbed phraseology

there was a very large substratum of good sense and sound judgment of men, to which I add of high principle. Among the special qualifications of a lawyer, the desire for justice takes a prominent place in his argument.

Looking at the whole document from the vantage-ground of later knowledge, the real, though unconscious, purpose seems to be pretty evident. Fitzjames had felt a repugnance to the clerical career, and is trying to convince himself that he has reasonable grounds for a feeling which his father would be slow to approve. There is not the least trace of any objection upon grounds of dissent from the Articles; though he speaks of responsibility imposed by the solemn profession required upon ordination. His real reason is explained in a long comparison between the 'simple-minded' or 'sympathetic' and the 'casuistical' man. They may both be good men; but one of them possesses what the other does not, a power of at once placing himself in close relations to others, and uttering his own thoughts eloquently and effectively without being troubled by reserves and perplexed considerations of the precise meaning of words. He thinks that every clergyman ought to be ready to undertake the 'cure of souls,' and to be a capable spiritual guide. He has no right to take up the profession merely with a view to intellectual researches. In fact, he felt that he was without the qualifications which make a man a popular preacher, if the word may be used without an offensive connotation. He could argue vigorously, but was not good at appealing to the feelings, or offering spiritual comfort, or attracting the sympathies of the poor and ignorant. Substantially I think that he was perfectly right not only in the conclusion but in the grounds upon which it was based. He was a lawyer by nature, and would have been a most awkward and cross-grained piece of timber to convert into a priest.

He points himself to such cases as Swift, Warburton, and Sydney Smith to show the disadvantage of a secular man in a priest's vestments.

When his mind was made up, Fitzjames communicated his decision to his father. The dangerous illness of 1850 had thrown his father into a nervous condition which made him unable to read the quaint treatise I have described. He appears, however, to have argued that a man might fairly take orders with a view to literary work in the line of his profession. Fitzjames yielded this ground but still held to the main point. His father, though troubled, made no serious objection, and only asked him to reconsider his decision and to consult Henry Venn. Henry Venn wrote a letter, some extracts from which are appended to the volume with characteristic comments. Venn was too sensible a man not to see that Fitzjames had practically made up his mind. I need only observe that Fitzjames, in reply to some hints in his uncle's letter, observes very emphatically that a man may be serving God at the bar as in the pulpit. His career was now fixed. 'I never did a wiser thing in my life,' says 1865, 'than when I determined not to be a clergyman.' 'Amen!' says 1880, and I am sure that no other year in the calendar would have given a different answer. 'If anyone should ever care to know what sort of man I was then,' says Fitzjames in 1887, 'and, *mutatis mutandis*, am still, that paper ought to be embodied by reference in their recollections.'

Fitzjames took a lodging in London, for a year or so, and then joined my father at Westbourne Terrace. He entered at the Inner Temple, and was duly called to the bar on January 26, 1854. His legal education, he says, was very bad. He was for a time in the chambers of Mr. (now Lord) Field, then the leading junior on the Midland Circuit, but it was on the distinct understanding that he

was to receive no direct instruction from his tutor. He was also in the chambers of a conveyancer. I learnt, he says, 'a certain amount of conveyancing, but in a most mechanical, laborious, wooden kind of way, which had no advantage at all, except that it gave me some familiarity with deeds and abstracts. My tutor was a pure conveyancer; so I saw nothing of equity drafting. I worked very hard with him, however, but I was incapable of being taught and he of teaching.' The year 1852 was memorable for the Act which altered the old system of special pleading. 'The new system was by no means a bad one. . . . I never learnt it, at least not properly, and while I ought to have been learning, I was still under the spell of an unpractical frame of mind which inclined me to generalities and vagueness, and had in it a vast deal of laziness. When I look back on these times, I feel as if I had been only half awake or had not come to my full growth, though I was just under twenty-five when I was called. How I ever came to be a moderately successful advocate, still more to be a rather distinguished judge, is to me a mystery. I managed, however, to get used to legal ways of looking at things and to the form and method of legal arguments.' He was at the same time going through an apprenticeship to journalism, of which it will be more convenient to speak in the next chapter. It is enough to say for the present that his first efforts were awkward and unsuccessful. After he was called to the bar, he read for the LL.B. examination of the University of London; and not only obtained the degree but enjoyed his only University success by winning a scholarship. One of his competitors was the present Sir Mountstuart Grant Duff. This performance is conected with some very important passages in his development.

He had made some intimate friendships beyond the

apostolic circle, of whom Grant Duff was one of the first. They had already met at the rooms of Charles Henry Pearson, one of my brother's King's College friends.[1] Grant Duff was for a long time in very close intimacy, and the friendship lasted for their lives, uninterrupted by political differences. They were fellow-pupils in Field's chambers, were on circuit together for a short time till Grant Duff gave up the profession; and their marriages only brought new members into the alliance. I must confine myself to saying that my brother's frequent allusions prove that he fully appreciated the value of this friendship. Another equally intimate friendship of the same date was with Henry John Stephen Smith.[2] Smith was a godson of my uncle, Henry John Stephen. He and his sister had been from very early years on terms of especial intimacy with our cousins the Diceys. Where and when his friendship with my brother began I do not precisely know, but it was already very close. As in some later cases, of which I shall have to speak, the friendship seemed to indicate that Fitzjames was attracted by complementary rather than similar qualities in the men to whom he was most attached. No two men of ability could be much less like each other. Smith's talents were apparently equally adapted for fine classical scholarship and for the most abstract mathematical investigations. If it was not exactly by the toss of a shilling it was by an almost fortuitous combination of circumstances that he was decided to take to mathematics, and in that field won a European reputation. He soared, however, so far beyond ordinary ken that even

[1] Pearson died in 1894, after a career in England and Australia much troubled by ill health. His book upon *National Character*, published in 1893, first made his remarkable abilities generally known, though he had written very ably upon history.

[2] Born November 2, 1826, d. February 9, 1883. See the memoir by C. H. Pearson prefixed to the collection of Smith's *Mathematical Papers* (1894).

Europe must be taken to mean a small set of competent judges who might almost be reckoned upon one's fingers. But devoted as he was to these abstruse studies, Smith might also be regarded as a typical example of the finest qualities of Oxford society. His mathematical powers were recognised by his election to the Savilian professorship in 1860, and the recognition of his other abilities was sufficiently shown by the attempt to elect him member for the University in 1878. He would indeed have been elected had the choice been confined to the residents at Oxford. Smith could discourse upon nothing without showing his powers, and he would have been a singular instance in the House of Commons of a man respected at once for scholarship and for profound scientific knowledge, and yet a chosen mouthpiece of the political sentiments of the most cultivated constituency in the country. The recognition of his genius was no doubt due in great part to the singular urbanity which made him the pride and delight of all Oxford common rooms. With the gentlest of manners and a refined and delicate sense of humour, he had powers of launching epigrams the subtle flavour of which necessarily disappears when detached from their context. But it was his peculiar charm that he never used his powers to inflict pain. His hearers felt that he could have pierced the thickest hide or laid bare the ignorance of the most pretentious learning. But they could not regret a self-restraint which so evidently proceeded from abounding kindness of heart. Smith's good nature led him to lend too easy an ear to applications for the employment of his abilities upon tasks to which his inferiors would have been competent. I do not know whether it was to diffidence and reserve or to the gentleness which shrinks from dispelling illusions that another peculiarity is to be attributed. On religious matters, says

his biographer, he was 'absolutely reticent'; he would discuss such topics indeed, but without ever mentioning his own faith.

I mention this because it is relevant to his relations with my brother. Fitzjames was always in the habit of expressing his own convictions in the most downright and uncompromising fashion. He loved nothing better than an argument upon first principles. His intimacy with Smith was confirmed by many long rambles together; and for many years he made a practice of spending a night at Smith's house at Oxford on his way to and from the Midland Circuit. There, as he says, 'we used to sit up talking ethics and religion till 2 or 3 A.M.' I could not however, if I wished, throw any light upon Smith's views; Smith, he says in 1862, is a most delightful companion when he has got over his 'reserve'; and a year later he says that Smith is 'nearly the only man who cordially and fully sympathises with my pet views.' What were the pet views is more than I can precisely say. I infer, however, from a phrase or two that Smith's conversation was probably sceptical in the proper sense; that is, that he discussed first principles as open questions, and suggested logical puzzles. But my brother also admits that he never came to know what was Smith's personal position. He always talked 'in the abstract' or 'in the historical vein,' and 'seemed to have fewer personal plans, wishes and objects of any kind than almost any man I have ever known.'

These talks at any rate, with distinguished Oxford men, must have helped to widen my brother's intellectual horizon. They had looked at the problems of the day from a point of view to which the apostles seem to have been comparatively blind. Another influence had a more obvious result. Fitzjames had to read Stephen's com-

mentaries and Bentham[1] for the London scholarship. Bentham now ceased to be an object of holy horror. My brother, in fact, became before long what he always remained, a thorough Benthamite with certain modifications. It was less a case of influence, however, than of 'elective affinity' of intellect. The account of Fitzjames's experience at Cambridge recalls memories of the earlier group who discussed utilitarianism under the leadership of Charles Austin and looked up to James Mill as their leader. The hatred for 'sentimentalism' and 'vague generalities' and the indifference to mere poetical and literary interests were common to both. The strong points of Benthamism may, I think, be summed up in two words. It meant reverence for facts. Knowledge was to be sought not by logical jugglery but by scrupulous observation and systematic appeals to experience. Whether in grasping at solid elements of knowledge Benthamists let drop elements of equal value, though of less easy apprehension, is not to my purpose. But to a man whose predominant faculty was strong common sense, who was absolutely resolved that whatever paths he took should lead to realities, and traverse solid ground instead of following some will-o'-the-wisp through metaphysical quagmires amidst the delusive mists of a lawless imagination, there was an obvious fascination in the Bentham mode of thought. It must be added, too, that at this time J. S. Mill, the inheritor of Bentham's influences, was at the height of his great reputation. The young men who graduated in 1850 and the following ten years found their philosophical teaching in Mill's 'Logic,' and only a few daring heretics were beginning to pick holes in his system. Fitzjames certainly became a disciple and before long an advocate of these principles.

[1] I guess Dumont's 'Principles.'

I find one or two other indications of disturbing studies. He says in a letter that Greg's 'Creed of Christendom' (published in 1851) was the first book of the kind which he read without the sense that he was trespassing on forbidden ground. He told me that he had once studied Lardner's famous 'Credibility of the Gospel History,' to which Greg may not improbably have sent him. The impression made upon him was (though the phrase was used long afterwards) that Lardner's case 'had not a leg to stand upon.' From the Benthamite point of view, the argument for Christianity must be simply the historical evidence. Paley, for whom Fitzjames had always a great respect, put the argument most skilfully in this shape. But if the facts are insufficient to a lawyer's eye, what is to happen? For reasons which will partly appear, Fitzjames did not at present draw the conclusions which to many seem obvious. It took him, in fact, years to develope distinctly new conclusions. But from this time his philosophical position was substantially that of Bentham, Mill, and the empiricists, while the superstructure of belief was a modified evangelicism.

My father's liberality of sentiment and the sceptical tendencies which lay, in spite of himself, in his intellectual tendencies, had indeed removed a good deal of the true evangelical dogmatism. Fitzjames for a time, as I have intimated, seems to have sought for a guide in Maurice. He had been attracted when at King's College by Maurice's personal qualities, and when, in 1853, Maurice had to leave King's College on account of his views about eternal punishment, Fitzjames took a leading part in getting up a testimonial from the old pupils of his teacher. When he became a law student he naturally frequented Maurice's sermons at Lincoln's Inn. Nothing could be more impressive than the manner of the preacher. His voice often

trembled with emotion, and he spoke as one who had a solemn message of vast importance to mankind. But what was the message which could reach a hard-headed young 'lawyer by nature' with a turn for Benthamism? Fitzjames gives a kind of general form of Maurice's sermons. First would come an account of some dogma as understood by the vulgar. Tom Paine could not put it more pithily or expressively. Then his hearers were invited to look at the plain words of Scripture. Do they not mean this or that, he would ask, which is quite different to what they had been made to mean? My answer would have been, says Fitzjames, that his questions were 'mere confused hints,' which required all kinds of answers, but mostly the answer 'No, not at all.' Then, however, came Maurice's own answers to them. About this time his hearer used to become drowsy, with 'an indistinct consciousness of a pathetic quavering set of entreaties to believe what, when it was intelligible, was quite unsatisfactory.' Long afterwards he says somewhere that it was 'like watching the struggles of a drowning creed.' Fitzjames, however, fancied for a time that he was more or less of a Mauricean.

From one of his friends, the Rev. J. Llewelyn Davies, I have some characteristic recollections of the time. Mr. Davies was a college friend, and remembers his combativeness and his real underlying warmth of feeling. He remembers how, in 1848, Fitzjames was confident that the 'haves' could beat the 'have nots,' 'set his teeth' and exclaimed, 'Let them come on.' Mr. Davies was now engaged in clerical work at the East-end of London. My brother took pleasure in visiting his friend there, learnt something of the ways of the district, and gave a lecture to a Limehouse audience. He attended a coffee-house discussion upon the existence of God, and exposed the

inconclusiveness of the atheistic conclusions. On another occasion he went with 'Tom,' now Judge Hughes, to support Mr. Davies, who addressed a crowd in Leman Street one Sunday night. Hughes endeavoured to suppress a boy who was disposed for mischief. The boy threw himself on the ground, with Hughes holding him down. Fitzjames, raising a huge stick, plunged into the thick of the crowd. No one, however, stood forth as a champion of disorder; and Mr. Davies, guarded by his stalwart supporters, was able to speak to a quiet audience. Fitzjames, says Mr. Davies, was always ready for an argument in those days. He did not seek for a mere dialectical triumph; but he was resolved to let no assumption pass unchallenged, and, above all, to disperse sentiment and to insist upon what was actual and practical. He wrote to Mr. Davies in reference to some newspaper controversies: 'As to playing single-stick without being ever hit myself, I have no sort of taste for it; the harder you hit the better. I always hit my hardest.' 'Some people profess,' he once said to the same friend, 'that the sermon on the Mount is the only part of Christianity which they can accept. It is to me the hardest part to accept.' In fact, he did not often turn the second cheek. He said in the same vein that he should prefer the whole of the Church service to be made 'colder and less personal, and to revive the days of Paley and Sydney Smith.' (The Church of the eighteenth century, only without the disturbing influence of Wesley, was, as he once remarked long afterwards, his ideal.) 'After quoting these words,' says Mr. Davies in conclusion, 'I may be permitted to add those with which he closed the note written to me before he went to India (November 4, 1869), "God bless you. It's not a mere phrase, nor yet an unmeaning or insincere one in my mouth—affectionately yours." '

I shall venture to quote in this connection a letter from my father, which needs a word of preface. Among his experiments in journalism, Fitzjames had taken to writing for the 'Christian Observer,' an ancient, and, I imagine, at the time, an almost moribund representative of the evangelical party. Henry Venn had suggested, it seems, that Fitzjames might become editor. Fitzjames appears to have urged that his theology was not of the desired type. He consulted my father, however, who admitted the difficulty to be insuperable, but thought for a moment that they might act together as editor and sub-editor. My father says in his letters (August 4 and 8, 1854): 'I adhere with no qualifications of which I am conscious to the theological views of my old Clapham friends. You, I suppose, are an adherent of Mr. Maurice. To myself it appears that he is nothing more than a great theological rhetorician, and that his only definite and appreciable meaning is that of wedding the gospel to some form of philosophy, if so to conceal its baldness. But Paul of Tarsus many ages ago forbade the banns.' In a second letter he says that there does not seem to be much real difference between Fitzjames's creed and his own. 'It seems to me quite easy to have a theological theory quite complete and systematic enough for use; and scarcely possible to reach such a theory with any view to speculation—easy, I mean, and scarcely possible for the unlearned class to which I belong. The learned are, I trust and hope, far more fixed and comprehensive in their views than they seem to me to be, but if I dared trust to my own observation I should say that they are determined to erect into a science a series of propositions which God has communicated to us as so many detached and, to us, irreconcilable verities; the common link or connecting principle of which He has not seen fit to communicate. I am profoundly convinced of

the consistency of all the declarations of Scripture; but I am as profoundly convinced of my own incapacity to perceive that they are consistent. I can receive them each in turn, and to some extent I can, however feebly, draw nutriment from each of them. To blend them one with another into an harmonious or congruous whole surpasses my skill, or perhaps my diligence. But what then? I am here not to speculate but to repent, to believe and to obey; and I find no difficulty whatever in believing, each in turn, doctrines which yet seem to me incompatible with each other. It is in this sense and to this extent that I adopt the whole of the creed called evangelical. I adopt it as a regulator of the affections, as a rule of life and as a quietus, not as a stimulant to inquiry. So, I gather, do you, and if so, I at least have no right to quarrel with you on that account. Only, if you and I are unscientific Christians, let us be patient and reverent towards those whose deeper minds or more profound inquiries, or more abundant spiritual experience, may carry them through difficulties which surpass our strength.'

My brother's reverence for his father probably prevented him from criticising this letter as he would have criticised a similar utterance from another teacher. He has, however, endorsed it—I cannot say whether at the time—with a tolerably significant remark. 'This,' he says, 'is in the nature of a surrebutter; only the parties, instead of being at issue, are agreed. My opinion as to his opinions is that they are a sort of humility which comes so very near to irony that I do not know how to separate them. Fancy old Venn and Simeon having had more capacious minds than Sir James (*credat Christianus*).'

The 'Christian Observer' was at this time edited by J. W. Cunningham, vicar of Harrow, who was trying to

save it from extinction. He had been educated at Mr. Jowett's, at Little Dunham and at Cambridge, and had been a curate of John Venn, of Clapham. He belonged, therefore, by right, to the evangelical party, and had been more or less known to my father for many years. His children were specially intimate with my aunt, Mrs. Batten, whose husband was a master at Harrow. Emelia Batten, now Mrs. Russell Gurney, was a friend of Cunningham's children, and at this time was living in London, and on very affectionate terms with Fitzjames. He used to pour out to her his difficulties in the matter of profession choosing. There were thus various links between the Cunninghams and ourselves. Mr. Cunningham happened to call upon my father at Norwich, in the summer of 1850. With him came his eldest daughter by his second wife, Mary Richenda Cunningham, and there my brother saw her for the first time. He met her again in company with Miss Batten, on March 2, 1851, as he records, and thereupon fell in love, 'though in a quiet way at first. This feeling has never been disturbed in the slightest degree. It has widened, deepened, and strengthened itself without intermission from that day to this' (January 3, 1887).

The connection with the 'Christian Observer' was of value, not for the few guineas earned, but as leading to occasional visits to Harrow. Fitzjames says that he took great pains with his articles, and probably improved his style, though 'kind old Mr. Cunningham' had to add a few sentences to give them the proper tone. They got him some credit from the small circle which they reached, but that was hardly his main object. 'This period of my life closed by my being engaged on November 11, 1854, at Brighton, just eighteen years to the day after I went to school there, and by my being married on April 19, 1855,

at Harrow church, where my father and mother were married forty years before.' The marriage, he says, 'was a blessed revelation to me. It turned me from a rather heavy, torpid youth into the happiest of men, and, for many years, one of the most ardent and energetic. It was like the lines in Tennyson—

> A touch, a kiss, the charm was snapped
> . . . . . .
> And all the long-pent stream of life
> Dashed downward in a cataract.

I am surprised to find that, when I look back to that happiest and most blessed of days through the haze of upwards of thirty-two years, I do not feel in the least degree disposed to be pathetic over the lapse of life or the near approach of old age. I have found life sweet, bright, glorious. I should dearly like to live again; but I am not afraid, and I hope, when the time comes, I shall not be averse to die.'

At this point the autobiographical fragment ceases. I am glad that it has enabled me to use his own words in speaking of his marriage. No one, I think, can doubt their sincerity, nor can anyone who was a witness of his subsequent life think that they over-estimate the results to his happiness. I need only add that the marriage had the incidental advantage of providing him with a new brother and sister; for Henry (now Sir Henry) Stewart Cunningham, and Emily Cunningham (now Lady Egerton), were from this time as dear to him as if they had been connected by the closest tie of blood relationship.

CHAPTER III

THE BAR AND JOURNALISM

I. INTRODUCTORY

I HAVE traced at some length the early development of my brother's mind and character. Henceforward I shall have to describe rather the manifestation than the modification of his qualities. He had reached full maturity, although he had still much to learn in the art of turning his abilities to account. His 'indolence' and 'self-indulgence,' if they had ever existed, had disappeared completely and for ever. His life henceforward was of the most strenuous. He had become a strong man—strong with that peculiar combination of mental and moral force which reveals itself in masculine common sense. His friends not unfrequently compared him to Dr. Johnson, and, much as the two men differed in some ways, there was a real ground for the comparison. Fitzjames might be called pre-eminently a 'moralist,' in the old-fashioned sense in which that term is applied to Johnson. He was profoundly interested, that is, in the great problems of life and conduct. His views were, in this sense at least, original—that they were the fruit of his own experience, and of independent reflection. Most of us are so much the product of our surroundings that we accept without a question the ordinary formulæ which we yet hold so lightly that the principles which nominally govern serve only to excuse our spontaneous instincts.

The stronger nature comes into collision with the world, disputes even the most current commonplaces, and so becomes conscious of its own idiosyncrasies, and accepts only what is actually forced upon it by stress of facts and hard logic. The process gives to the doctrines which, with others, represent nothing but phrases, something of the freshness and vividness of personal discoveries. Probably ninety-nine men in a hundred assume without conscious inconsistency the validity both of the moral code propounded in the Sermon on the Mount, and of the code which regulates the actual struggle for life. They profess to be at once gentlemen and Christians, and when the two codes come into conflict, take the one which happens to sanction their wishes. They do not even observe that there is any conflict. Fitzjames could not take things so lightly. Even in his infancy he had argued the first principles of ethics, and worked out his conclusions by conflicts with schoolboy bullies. It is intelligible, therefore, that, as Mr. Davies reports, the Sermon on the Mount should be his great difficulty in accepting Christianity. Its spirit might be, in a sense, beautiful; but it would not fit the facts of life. So, he observes, in his autobiographical fragment, that one of his difficulties was his want of sympathy for the kind of personal enthusiasm with which his father would speak of Jesus Christ. He tried hard to cultivate the same feelings, but could not do so with perfect sincerity.

A man with such distinct and vivid convictions in the place of mere conventional formulæ was naturally minded to utter them. He was constantly provoked by the popular acceptance of what appeared to him shallow and insincere theories, and desired to expose the prevailing errors. But the 'little preacher' of three years old had discovered at one and twenty that the pulpit of the ordinary kind was

not congenial to him. His force of mind did not facilitate a quick and instinctive appreciation of other people's sentiments. When he came into contact with a man whose impressions of the world were opposed to his own, he was inclined to abandon even the attempt to account for the phenomenon. A man incapable of seeing things in the proper light was hardly worth considering at all. Fitzjames was therefore not sympathetic in the sense of having an imagination ready to place him at other men's point of view. In another sense his sympathies were exceedingly powerful. No man had stronger or more lasting affections. Once attached to a man, he believed in him with extraordinary tenacity and would defend him uncompromisingly through thick and thin. If, like Johnson, he was a little too contemptuous of the sufferings of the over-sensitive, and put them down to mere affectation or feeblemindedness, he could sympathise most strongly with any of the serious sorrows and anxieties of those whom he loved, and was easily roused to stern indignation where he saw sorrow caused by injustice. I shall mention here one instance, to which, for obvious reasons, I can only refer obscurely; though it occupied him at intervals during many years. Shortly after being called to the bar he had agreed to take the place of a friend as trustee for a lady, to whom he was then personally unknown. A year or two later he discovered that she and her husband were the objects of a strange persecution from a man in a respectable position who conceived himself to have a certain hold over them. Fitzjames's first action was to write a letter to the persecutor expressing in the most forcible English the opinion that the gentleman's proper position was not among the respectable but at one of her Majesty's penal settlements. His opinion was carefully justified by a legal statement of the facts upon which it rested, and the effect was like the

discharge of the broadside of an old ship of the line upon a hostile frigate. The persecutor was silenced at once and for life. Fitzjames, meanwhile, found that the money affairs of the pair whose champion he had become were deeply embarrassed. He took measures, which were ultimately successful, for extricating them from their difficulties; and until the lady's death, which took place only a year or two before his own, was her unwearied counsellor and protector in many subsequent difficulties. Though I can give no details, I may add that he was repaid by the warm gratitude of the persons concerned, and certainly never grudged the thought and labour which he had bestowed upon the case.

Fitzjames having made up his mind that he was a 'lawyer by nature,' had become a lawyer by profession. Yet the circumstances of his career, as well as his own disposition, prevented him from being absorbed in professional duties. For the fifteen years which succeeded his call to the bar he was in fact following two professions; he was at once a barrister and a very active journalist. This causes some difficulty to his biographer. My account of his literary career will have to occupy the foreground, partly because the literary story bears most directly and clearly the impress of his character, and partly because, as will be seen, it was more continuous. I must, however, warn my readers against a possible illusion of perspective. To Fitzjames himself the legal career always represented the substantive, and the literary career the adjective. Circumstances made journalism highly convenient, but his literary ambition was always to be auxiliary to his legal ambition. It would, of course, have been injurious to his prospects at the bar had it been supposed that the case was inverted; and as a matter of fact his eyes were always turned to the summit of that long hill of difficulty which has

to be painfully climbed by every barrister not helped by special interest or good fortune. This much must be clearly understood, but I must also notice two qualifications. In the first place, though he became a journalist for convenience, he was in some sense too a journalist by nature. He found, that is, in the press a channel for a great many of the reflections which were constantly filling his mind and demanding some outlet. He wrote for money, and without the least affectation of indifference to money; but the occupation enabled him also to gratify a spontaneous and powerful impulse. And, in the next place, professional success at the bar was in his mind always itself connected with certain literary projects. Almost from the first he was revolving schemes for a great book, or rather for a variety of books. The precise scheme changed from time to time; but the subject of these books is always to be somewhere in the province which is more or less common to law and ethics. Sometimes he is inclined to the more purely technical side, but always with some reference to the moral basis of law; and sometimes he leans more to philosophical and theological problems, but always with some reference to his professional experience and to legal applications. So, for example, he expresses a desire (in a letter written, alas! after the power of executing such schemes had disappeared) to write upon the theory of evidence; but he points out that the same principles which underlie the English laws of evidence are also applicable to innumerable questions belonging to religious, philosophical, and scientific inquiries. Now the position of a judge or an eminent lawyer appeared to him from the first to be desirable for other reasons indeed, but also for the reason that it would enable him to gain experience and to speak with authority. At moments he had thoughts of abandoning law for literature; although the

thoughts disappeared as soon as his professional prospects became brighter. His ideal was always such a position as would enable him to make an impression upon the opinions of his countrymen in that region where legal and ethical speculation are both at home.

II. FIRST YEARS AT THE BAR

I will begin by some general remarks upon his legal career, which will thus be understood as underlying his literary career. Fitzjames was called to the bar of the Inner Temple on January 26, 1854. He had his first brief soon afterwards at the Central Criminal Court, where twenty-five years later he also made his first appearance as a judge. In the same year he joined the Midland Circuit. He had no legal connections upon that or any other circuit. His choice was determined by the advice of Kenneth Macaulay, then leader of the Midland Circuit. He afterwards referred to this as one of the few cases in which good advice had really been of some use. In a letter written in July 1855 he observes that the Midland is the nearest approach to the old circuits as they were before the days of railways. It was so far from London that the barristers had to go their rounds regularly between the different towns instead of coming down for the day. He describes the party who were thus brought together twice a year, gossiping and arguing all day, with plenty of squabbling and of 'rough joking and noisy high spirits' among the idler, that is, much the larger part. He admits that the routine is rather wearisome: the same judgments and speeches seem to repeat themselves 'like dreams in a fever,' and 'droves of wretched over-driven heavy people come up from the prison into a kind of churchwardens' pew,' when the same story is

repeated over and over again. And yet he is profoundly interested. Matters turn up which 'seem to me infinitely more interesting than the most interesting play or novel,' and you get strange glimpses of the ways of thinking and living among classes otherwise unknown to you. These criminal courts, he says in another letter, are a 'never-ending source of interest and picturesqueness for me. The little kind of meat-safe door through which the prisoners are called up, and the attendant demon of a gaoler who summons them up from the vasty deep and sends them back again to the vasty deep for terms of from one week to six years, have a sort of mysterious attraction.'

Mr. Franklin Lushington, who was my brother's contemporary on the circuit and ever afterwards an intimate friend, has kindly given me his impressions of this period. It would have been difficult, he says, to find a circuit 'on which the first steps of the path that opens on general eminence in the profession were slower to climb than on the Midland.' It was a small circuit, 'attended by some seventy or eighty barristers and divided into two or three independent and incompatible sets of Quarter Sessions, among which after a year or so of tentative experience it was necessary to choose one set and stand by it. Fitzjames and I both chose the round of the Lincolnshire, Nottinghamshire, and Derbyshire sessions; which involved a good deal of travelling and knocking about in some out-of-the-way country districts, where the sessions bar is necessarily thrown into circumstances of great intimacy. Even when a sessions or assize reputation was gained, it was and remained intensely local. The intricate points relative to settlements and poor-law administration, which had provided numerous appeals to the higher courts in a previous generation, had dwindled gradually to nothing. Even the most remarkable success, slowly and

painfully won in one county, might easily fail to produce an effect in the next, or to give any occasion for passing through the thickset hedge which parts provincial from metropolitan notoriety. The most popular and admired advocate in the Lincolnshire courts for many years was our dear friend F. Flowers, afterwards a police magistrate, one of the wittiest, most ingenious, and most eloquent of the bar. Though year after year he held every Lincolnshire jury in the hollow of his hand, and frequently rose to a strain of powerful and passionate oratory which carried away himself and his hearers—not Lincolnshire folk only—in irresistible sympathy with his cause, Flowers remained to his last day on circuit utterly unknown and untried in the adjacent shires of Derby and Nottingham.'

A circuit bar, adds Mr. Lushington, 'may be roughly divided into three classes: those who are determined to make themselves heard; those who wish to be heard if God calls; and those who without objecting to be heard wish to have their pastime whether they are heard or not. Fitzjames was in the first category, and from the first did his utmost to succeed, always in the most legitimate way.' No attorney, looking at the rows of wigs in the back benches, could fail to recognise in him a man who would give his whole mind to the task before him. 'It was natural to him to look the industrious apprentice that he really was; always craving for work of all kinds and ready at a moment's notice to turn from one task to another. I used to notice him at one moment busy writing an article in complete abstraction and at the next devouring at full speed the contents of a brief just put into his hand, and ready directly to argue the case as if it had been in his hand all day.'

Fitzjames not long afterwards expressed his own judgment of the society of which he had become a member.

The English bar, he says,[1] 'is exactly like a great public school, the boys of which have grown older and have exchanged boyish for manly objects. There is just the same rough familiarity, the same general ardour of character, the same kind of unwritten code of morals and manners, the same kind of public opinion expressed in exactly the same blunt, unmistakable manner.' It would astonish outsiders if they could hear the remarks sometimes addressed by the British barrister to his learned brother—especially on circuit. The bar, he concludes, 'are a robust, hard-headed, and rather hard-handed set of men, with an imperious, audacious, combative turn of mind,' sometimes, though rarely, capable of becoming eloquent. Their learning is 'multifarious, ill-digested and ill-arranged, but collected with wonderful patience and labour, with a close exactness and severity of logic, unequalled anywhere else, and with a most sagacious adaptation to the practical business of life.'

Fitzjames's position in this bigger public school had at any rate one advantage over his old Etonian days. There was no general prejudice against him to be encountered; and in the intellectual 'rough and tumble' which replaced the old school contests his force of mind was respected by everyone and very warmly appreciated by a chosen few. Among his closest intimates were Mr. Lushington and his old schoolfellow Mr. Arthur Coleridge, who became Clerk of Assize upon the circuit. At starting he had also the society of his friend Grant Duff. They walked together in the summer of 1855, and visited the Trappist Monastery in Charnwood Forest. There they talked to a shaven monk in his 'dreary white flannel dress,' bound with a black strap. They moralised as they returned,

[1] 'Bars of France and England,' *Cornhill Magazine*, p. 681, August 1864.

and Fitzjames thought on the whole that his own life was wholesomer than the monastic. He hopes, however, that the monk and his companions may 'come right,' as 'no doubt they will if they are honest and true.' 'I suppose one may say that God is in convents and churches as well as in law courts or chambers—though not to my eyes so palpably.'

Sir M. Grant Duff left the circuit after a year or two; but Fitzjames found a few other congenial companions with whom he could occasionally walk and often argue to his heart's content. Among his best friends was Kenneth Macaulay, who became a leader on the circuit, and who did his best to introduce Fitzjames to practice. Mr. Arthur Coleridge, too, was able to suggest to the judges that Fitzjames should be appointed to defend prisoners not provided with counsel. This led by degrees to his becoming well known in the Crown Court, although civil business was slow in presenting itself. Several of the judges took early notice of him. In 1856 he has some intercourse with Lord Campbell, then Chief Justice, and with Chief Baron Pollock, both of them friends of his father. He was 'overpowered with admiration' at Campbell's appearance. Campbell was 'thickset as a navvy, as hard as nails,' still full of vigour at the age of seventy-six, about the best judge on the bench now, and looking fit for ten or twelve years' more of work.[1] Pollock was a fine lively old man, thin as a threadpaper, straight as a ramrod, and full of indomitable vivacity. The judges, however, who formed the highest opinion of him and gave him the most encouragement were Lord Bramwell and Willes.

In 1856 he observes that he was about to take a walk with Alfred Wills of the 'High Alps.' This was the

[1] He died June 22, 1861.

present Mr. Justice Wills; who has also been kind enough to give me some recollections which are to the purpose in this place. Wills was called to the bar in 1851 and joined the Midland Circuit, but attended a different set of quarter sessions. He saw a good deal of Fitzjames, however, at the assizes; and though not especially intimate, they always maintained very friendly relations. The impression made upon Wills in these early years was that Fitzjames was a solitary and rather unsocial person. He was divided from his fellows, as he had been divided from his companions at school and college, by his absorption in the speculations which interested him so profoundly. 'He was much more learned, much better read, and had a much more massive mind than most of us, and our ways and talks must have seemed petty and trivial to him.' Though there were 'some well-read men and good scholars among us, even they had little taste for the ponderous reading in which Fitzjames delighted.' Wills remembers his bringing Hobbes' 'Leviathan' with him, and recreating himself with studying it after his day's work. To such studies I shall have to refer presently, and I will only say, parenthetically, that if Mr. Justice Wills would read Hobbes, he would find, though he tells me that he dislikes metaphysics, that the old philosopher is not half so repulsive as he looks. Still, a constant absorption in these solid works no doubt gave to his associates the impression that Fitzjames lived in a different world from theirs. He generally took his walks by himself, Coleridge being the most frequent interrupter of his solitude. He would be met pounding along steadily, carrying, often twirling, a 'very big stick,' which now and then came down with a blow—upon the knuckles, I take it, of some imaginary blockhead on the other side—muttering to

himself, 'immersed in thought and with a fierce expression of concentrated study.' He did not often come to mess, and when he did found some things of which he did not approve. Barristers, it appears, are still capable of indulging in such tastes as were once gratified by the game of 'High Jinks,' celebrated in 'Guy Mannering.' The Circuit Court was the scene of a good deal of buffoonery. It was customary to appoint a 'crier'; and Fitzjames, 'to his infinite disgust, was elected on account of his powerful voice. He stood it once or twice, but at last broke out in a real fury, and declared he would never come to the Circuit Court again, calling it by very strong names. If he had been a less powerful man I am sure that there would have been a fight; but no one cared to tackle that stalwart frame, and I am not sure that the assailant would have come out of the fray alive if he had.' The crisis of this warfare appears to have happened in 1864, when Yorkshire was added to the Midland Circuit, and an infusion of barristers from the Northern Circuit consequently took place. It seems that the manners and customs of the northerners were decidedly less civilised than those of their brethren. A hard fight had to be fought before they could be raised to the desired level. In 1867 I find that Fitzjames proposed the abolition of the Circuit Court. He was defeated by twenty votes to fifteen; and marvels at the queer bit of conservatism cropping up in an unexpected place. In spite of these encounters, Fitzjames not only formed some very warm friendships on circuit, but enjoyed many of the social meetings, and often recurred to them in later years. He only despised tomfoolery more emphatically than his neighbours. Nobody, indeed, could be a more inconvenient presence where breaches of decency or good manners were to be apprehended. I vividly remember

an occasion upon which he was one of a little party of young men on a walking tour. A letter read out by one of them had the phrase, 'What a pity about Mrs. A.!' Someone suggested a conjectural explanation not favourable to Mrs. A.'s character. He immediately came in for a stern denunciation from Fitzjames which reduced us all to awestruck silence, and, I hope, gave the speaker an unforgetable lesson as to the duty of not speaking lightly in matters affecting female reputation. He collapsed; and I do not recollect that he ventured any comment upon a letter of the next morning which proved his conjecture to be correct. The principle was the same.

These characteristics, as I gather both from Mr. Justice Wills and from Mr. Lushington, caused Fitzjames to be the object rather of respect than of general popularity. His friends could not fail to recognise the depth of his real kindness of heart. Mr. Justice Wills refers to one little incident of which my brother often spoke. Fitzjames visited him at the 'Eagle's Nest,' in 1862, and there found him engaged in nursing Auguste Balmat, the famous guide, who was dying of typhoid fever. The natives were alarmed, and the whole labour of nursing fell upon Mr. and Mrs. Wills. Fitzjames, on his arrival, relieved them so far as he could, and enabled them to get some nights' sleep. I remember his description of himself, sitting up by the dying man, with a volume of 'Pickwick' and a vessel of holy water, and primed with some pious sentences to be repeated if the last agony should come on. It was a piece of grim tragedy with a touch of the grotesque which impressed him greatly. 'I never knew anyone,' says Mr. Justice Wills, 'to whom I should have gone, if I wanted help, with more certainty of getting it.' When Fitzjames was on the bench, he

adds, and he had been himself disappointed of reaching the same position under annoying circumstances, he had to appear in a patent case before his friend. Fitzjames came down to look at a model, and Wills said, 'Your Lordship will see,' &c. 'He got hold of the hand next his own, gave me a squeeze which I did not forget in a hurry, and whispered, "If you ever call me 'my lordship' again, I shall say something!"' That hand-grip, indeed, as Wills remarks, was eminently characteristic. It was like the squeeze of a vice, and often conveyed the intimation of a feeling which shrank from verbal expression.

It is plain enough that a man of such character would not find some difficulties smoothed for him. He could not easily learn the lesson of 'suffering fools gladly.' He formed pretty strong views about a man and could express them frankly. The kind of person whom Carlyle called a windbag, and to whom he applied equally vigorous epithets, was especially obnoxious to him, however dexterous might be such a man's manipulation of difficult arguments. His talent, too, scarcely lent itself to the art of indirect intimations of his opinions. He remarks himself, in one of his letters, that he is about as clever at giving hints as the elder Osborne in 'Vanity Fair'; of whom Thackeray says that he would give what he called a 'hint' to a footman to leave his service by kicking the man downstairs. And, therefore, I suspect that when Fitzjames considered someone—even a possible client—to be a fool or a humbug, his views might be less concealed than prudence would have dictated. 'When once he had an opportunity of showing his capacities,' says Mr. Lushington, 'the most critical solicitor could not fail to be satisfied of his vigour and perseverance; his quick comprehension of, and his close attention to detail; and his gift in speaking of clear

common-sense and forcible expression, free from wearisome redundancy or the suggestion of an irony that might strike above the heads of the jury. He gained the confidence of clients of all sorts—some of curious, impulsive, and not over-strict character, who might, perhaps, have landed a weaker or less rigidly high-principled advocate in serious blunders; and I do not think that he ever lost a client whom he had once gained.' But the first step was not easy. His solitary ways, his indifference to the lighter pursuits of his companions, and his frequent absorption in other studies, made him slow to form connections and prevented him from acquiring early, if he ever fully acquired, the practical instinct which qualifies a man for the ordinary walk of law courts. When, says Mr. Justice Wills, 'he got you by yourself in a corner—with no opportunity of dancing round him—in a single combat of stroke for stroke, real business, conditions defined and mastered, he was a most formidable antagonist, mercilessly logical, severely powerful, with the hand of a giant.' But he was, says the same critic, rather too logical for the common tricks of the trade, which are learnt by a long and persistent handling of ordinary business. He did not understand what would 'go down,' and what was of 'such a character that people would drive a coach and six through precedents and everything else in order to get rid of it.' He was irritated by an appeal to practical consequences from what he considered to be established principles. Then, too, his massive intellect made him wanting in pliability. 'He could not change front in presence of the enemy'; and rather despised the adaptations by which clever lawyers succeed in introducing new law under a pretence of applying old precedents. As I have already said, he was disgusted with the mere technicalities of the law, and the conversion of what ought to be a logical

apparatus for the discovery of truth into an artificial system of elaborate and superfluous formalities. His great ambition was (in his favourite expression) to 'boil down' the law into a few broad common-sense principles. He was, therefore, not well qualified for some branches of legal practice, and inclined to regard skill of the technical kind with suspicion, if not with actual dislike. Upon this, however, I shall have to dwell hereafter.

Meanwhile, he was deeply interested in the criminal cases, which were constantly presenting ethical problems, and affording strange glimpses into the dark side of human nature. Such crimes showed the crude, brutal passions which lie beneath the decent surface of modern society, and are fascinating to the student of human nature. He often speaks of the strangely romantic interest of the incidents brought to light in the 'State Trials'; and in these early days he studied some of the famous cases, such as those of Palmer and Dove, with a professional as well as a literary interest. In later life he avoided such stories; but at this period he occasionally made a text of them for newspaper articles, and was, perhaps, tempted to adopt theories of the case too rapidly. This was thought to be the case in regard to one Bacon, who was tried in Lincoln in the summer of 1857. The case was one to which Fitzjames certainly attached great importance, and I will briefly mention it before passing to his literary career.

Bacon and his wife were tried at London in the spring of 1857 for the murder of their two young children. It was sufficiently proved upon that occasion that Mrs. Bacon (who had already been in a madhouse) committed the crime in a fit of insanity. Bacon, however, had endeavoured to manufacture some evidence in order to give countenance to a theory that the murder had been committed by housebreakers during his absence. He thus

incurred suspicion, and was placed upon trial with his wife. It also came out that he had been tried (and acquitted) a year before for setting fire to his own house, and reasons appeared for suspecting him of an attempt to poison his mother at Stamford three years previously. Upon these facts Fitzjames wrote an article in the 'Saturday Review.'[1] He declared that the crime was as interesting, except for the want of dignity of the actors, as the events which gave the plot of some of the tragedies of Æschylus. It reminded him, too, of the terrible story of 'Jane Eyre.' For we had to suppose either that Bacon suffered by his marriage to a mad woman who had poisoned his mother, burnt his house, and cut his children's throats; or else that the wife's last outbreak had been the incidental cause of the discovery of his own previous crimes. In the last case we had an instance of that 'retributive vengeance' which, though it cannot be 'reduced to a very logical form, speaks in tones of thunder to the imaginations of mankind.'

The case came, as it happened, to the Midland Circuit. Bacon was tried in Lincoln on July 25 for poisoning his mother. Fitzjames writes from the court, where he is waiting in the hope that he may be asked by the judge to defend the prisoner. While he writes, the request comes accordingly, and he feels that if he is successful he may make the first step to fortune. He was never cooler or calmer, he says, in his life, and has always, 'in a way of his own,' 'truly and earnestly trusted in God to help him in all the affairs of life.' He made his speech, and suggested the theory already noticed, that the poisoning might have been the act of the mad wife. The judge paid him a high compliment, but summed up for a conviction, which accordingly followed. Fitzjames himself thought, though

[1] May 16, 1857.

he was not 'quite sure,' that the man was guilty. He commented upon the case in another article in the 'Saturday Review,' not, of course, to dispute the verdict, but to draw a characteristic inference. Is it not, he asks, very hard upon a poor prisoner that he should have no better means of obtaining counsel than the request of the judge at the last moment to some junior barrister? They manage these things, he thinks, better in France; though 'we have no reason to speak with disrespect of the gentleman who conducted the case.'

Whatever may have been thought of Fitzjames's judgment in this case, he gradually, as I have said, came to be regularly employed upon similar occasions. By slow degrees, too, more profitable briefs came to him; but he was in the trying position of appearing on a good many occasions which excited much interest, while more regular work still declined to present itself in corresponding proportions. Now and then a puff of wind filled his sails for the moment, but wearying calms followed, and the steady gale which propels to fortune and to the highest professional advancement would not set in with the desired regularity.

III. THE 'SATURDAY REVIEW.'

Here therefore I leave the story of his main profession to take up his work in other capacities. When he left Cambridge, the 'Morning Chronicle' was passing through a short phase of unprofitable brilliancy. It had been bought by the 'Peelites,' who are reported to have sunk as much as 200,000*l.* upon it. John Douglas Cook was editor, and among his contributors were Maine and others of Fitzjames's college friends. Naturally he was anxious to try his hand. He wrote several articles in the winter of 1851–2. 'The pay,' says Fitzjames, 'was very high—

3*l.* 10*s.* an article, and I thought that I was going to make a fortune. I was particularly pleased, I remember, with my smartness and wit, but, alas and alas! Cook found me out and gradually ceased to put in my articles. I have seldom felt much keener disappointment, for I was ardently desirous of standing on my own legs and having in my pocket a little money of my own earning. I took heart, however, and decided to try elsewhere. I wrote one or two poor little articles in obscure places, and at last took (as already stated) to the "Christian Observer." I took great pains,' he says, 'with my articles, framing my style upon conveyancing and special pleading, so that it might be solid, well-connected, and logical, and enable me to get back to the Paradise of 3*l.* 10*s.* an article, from which, as I strongly suspected, my flippancy had excluded me.' 'Flippancy' was clearly not in his line. Besides the 'Christian Observer,' I find that the 'Law Magazine' took a few articles from him, but there is no trace of other writings until 1855. In that year was published the first number of 'Cambridge Essays,' which, in alliance with a series of 'Oxford Essays,' lived for a couple of years and contained some very good work. Maine became first known to the public by an article upon Roman Law contributed in 1856, and a study of Coleridge's philosophy by Professor Hort, another apostle, is one of the best extant discussions of a difficult subject. Fitzjames, in 1855, wrote a characteristic article upon 'The Relation of Novels to Life,' and in 1857 one upon 'Characteristics of English Criminal Law.' The articles roused some interest and helped to encourage him.

Meanwhile the 'Morning Chronicle' had changed hands, and its previous supporters set up the 'Saturday Review,' of which the first number appeared on November 3, 1855. John Douglas Cook, who took command of

the new adventure and brought some followers from the 'Morning Chronicle,' was a remarkable man in his way. He was one of the innumerable young Scots who go out to seek their fortune abroad. He had received some appointment in India, quarrelled with his employers, and came home on foot, or partly on foot, for his narratives of this period were generally, it was thought, marked rather by imaginative fervour than by a servile adherence to historic accuracy. He found work on the 'Times,' supported Mr. Walter in an election, was taken up by the Duke of Newcastle, and was sent by him to inquire into the revenues of the Duchy of Cornwall. He then appeared as an editor, and, if he failed in the 'Morning Chronicle,' made ample amends by his guidance of the 'Saturday Review.' He was a man of no particular education, and apparently never read a book. His language and manners were such as recalled memories of the old days of Maginn and other Bohemians whose portraits are drawn in 'Pendennis.' But besides other qualities which justified the friendship and confidence of his supporters, Cook had the faculty of recognising good writing when he saw it. Newspapers have occasionally succeeded by lowering instead of raising the standard of journalism, but the 'Saturday Review' marked at the time as distinct an advance above the previous level as the old 'Edinburgh Review.' In his fifteen years' editorship of the 'Saturday Review,' Cook collected as distinguished a set of contributors as has ever been attracted to an English newspaper. Many of them became eminent in other ways. Maine and Sir W. Harcourt were, I believe, among the earliest recruits, following Cook from the 'Morning Chronicle.' Others, such as Professor Freeman, Mark Pattison, Mr. Goldwin Smith, Mr. John Morley, the late Lord Justice Bowen, and many other well-

known writers, joined at different periods and with more or less regularity, but from the first the new journal was wanting neither in ability nor audacity.[1] Two of the chief contributors who became close friends of Fitzjames's enjoyed a reputation among their friends altogether out of proportion to their public recognition. The first was George Stovin Venables. He was a fellow of Jesus College, Cambridge. He had been a first-classman in the Classical Tripos of 1832, when he was placed next to W. H. Thompson, afterwards Master of Trinity. He too was an apostle and an intimate both of Tennyson and Thackeray. Indeed, the legend ran that it was his fist which, at Charterhouse School, had disfigured Thackeray's nose for life. He was tall, strikingly handsome, and of singularly dignified appearance. Though recognised as an intellectual equal by many of the ablest men of his time, he chose paths in which little general reputation could be won. He made a large income at the parliamentary bar, and amused himself by contributing regularly to the 'Saturday Review.'[2] Stories used to be current of the extraordinary facility with which he could turn out his work, and I imagine that the style of the new periodical was determined more by his writing than by that of any of his colleagues. The political utterances were supposed to be supercilious, and were certainly not marked by any fiery enthusiasm. Venables had an objection to the usual editorial 'we,' and one result was that the theories of the paper were laid down with a certain impersonal pomp, as gnomic utterances of an anonymous philosopher. I need not, however, discuss their merit. Venables wrote, if I

[1] I see from a contemporary note that Fitzjames attributes an article upon Goethe in one of the first numbers to 'Froude, who wrote the *Nemesis of Faith*'; but this appears to be only his conjecture.

[2] I believe also that for many years he wrote the annual summary of events in the *Times*.

am not mistaken, some admirable literary criticisms, and claimed to have been one of the first to recognise the poetical merits of his friend Tennyson, and, after a long interval, those of Mr. Swinburne, whom he regarded as the next legitimate heir to the throne. Venables was warmly beloved by his intimates, and Fitzjames through life frequently declared that he felt for him a kind of filial affection.

The other Saturday reviewer with whom he became specially intimate was Thomas Collett Sandars. He was a Balliol scholar and a Fellow of Oriel, and is known as an editor (1853) of Justinian's 'Institutes.' It is, I am told, a useful textbook, but the editor makes no special pretensions to original research. Sandars was at one time a professor of Constitutional Law in the Inns of Court, but he was much occupied in various financial undertakings and did little to make himself known to the outside world. He was a man, however, of great literary taste, and overflowing with humorous and delightful conversation. He survived my brother by a few months only, and in the interval spoke to me with great interest of his memories of the old 'Saturday Review' days. He was in early days on most intimate terms with Fitzjames; they discussed all manner of topics together and were for some time the two principal manufacturers of what were called 'middles'—the articles which intervened between the political leaders and the reviews of books. These became gradually one of the most characteristic facts of the paper, and, as I shall presently explain, gave an opportunity of which Fitzjames was particularly glad to avail himself.

The first contribution from Fitzjames appeared in the second number of the paper. For a short time its successors are comparatively rare, but in the course of the

following spring he begins to contribute regularly two articles a week, and before long there are sufficient indications that the editor looks upon him with favour. Articles running to a length of four columns, for example, show that he was not only pouring himself out pretty freely, but that his claims upon space were not grudgingly treated. In March 1856 he says that he is 'very nervous' about his articles and doubtful of Cook's approval, but in the same month he is greatly cheered by a conversation upon the subject with Maine, and begins to perceive that he has really got a permanent footing. He used to tell a story which I cannot perfectly recollect, but which was to the following effect. He had felt very doubtful of his own performances; Cook did not seem at first to be cordial, and possibly his attempts to 'form a style' upon the precedents of conveyancing were not altogether successful. Feeling that he did not quite understand what was the style which would win approval, he resolved that, for once, he would at least write according to his own taste and give vent to his spontaneous impulses, even though it might be for the last time of asking. To his surprise, Cook was delighted with his article, and henceforward he was able to write freely, without hampering himself by the attempt to satisfy uncongenial canons of journalism.[1]

However this may be, he was certainly writing both abundantly and vigorously during the following years. The 'Saturday Review,' like the old 'Edinburgh,' was proud beyond all things of its independence. It professed a special antipathy to popular humbugs of every kind, and was by no means backward in falling foul of all its contemporaries for their various concessions to popular foibles.

[1] A list was preserved by Fitzjames of his contributions to the *Saturday Review* and other periodicals of his time, which enables me to speak of his share with certainty.

The writers were for the most part energetic young men, with the proper confidence in their own infallibility, and represented faithfully enough the main current of the cultivated thought of their day. The paper had occasionally to reflect the High Church proclivities of its proprietor, but the articles showing that tendency were in odd contrast to the general line of argument, which more naturally expressed the contempt of the enlightened for every popular nostrum. Fitzjames, in particular, found occasions for energetically setting forth his own views. He had, of course, a good many chances of dealing with legal matters. He writes periodical articles upon 'the assizes' or discusses some specially interesting case. He now and then gets a chance of advocating a codification of the laws, though he admits the necessity of various preliminary measures, and especially of a more philosophical system of legal education. He denounces the cumbrous and perplexed state of the law in general so energetically, that the arguments have to be stated as those of certain reformers with whom the paper does not openly identify itself.

As became a good Saturday reviewer, he fell foul of many popular idols. One regular chopping-block for irreverent reviewers was Dr. Cumming, who was then proving from the Apocalypse that the world would come to an end in 1865. His ignorance of Greek and of geography, his audacious plagiarisms from E. B. Elliott (a more learned though not a much wiser interpreter), and his insincerity, are denounced so unsparingly as to suggest some danger from the law of libel. Dr. Cumming, however, was wise in his generation, and wrote a letter of such courteous and dignified remonstrance that the 'Saturday Review' was forced to reply in corresponding terms, though declining to withdraw its charges. The whole world of contemporary journalism is arraigned

for its subserviency to popular prejudices. The 'Record' is lashed for its religious rancour, and the 'Reasoner' for its vapid version of popular infidelity, though it is contemptuously preferred, in point of spirit, to the 'Record.' Fitzjames flies occasionally at higher game. The 'Times,' if he is to be believed, is conspicuous for the trick of spinning empty verbiage out of vapid popular commonplaces, and, indeed, good sense and right reason appear to have withdrawn themselves almost exclusively to the congenial refuge of the 'Saturday Review.'

There is, however, no shrine sacred to the vulgar in which the writer delights in playing the part of iconoclast so heartily as in that represented by the comic literature of the day. This sentiment, as I have said, had grown up even in Eton schooldays. There was something inexpressibly repugnant to Fitzjames in the tone adopted by a school of which he took Dickens and Douglas Jerrold to be representatives. His view of the general literary question comes out oddly in the article upon 'The Relation of Novels to Life,' contributed to the 'Cambridge Essays.' He has no fear of modern æsthetes before his eyes. His opinion is that life is too serious a business for tomfoolery and far too tragic for needless ostentation of sentiment. A novel should be a serious attempt by a grave observer to draw a faithful portrait of the actual facts of life. A novelist, therefore, who uses the imaginary facts, like Sterne and Dickens, as mere pegs on which to hang specimens of his own sensibility and facetiousness, becomes disgusting. When, he remarks, you have said of a friend 'he is dead,' all other observations become superfluous and impertinent. He, therefore, considers 'Robinson Crusoe' to represent the ideal novel. It is the life of a brave man meeting danger and sorrow with unflinching courage, and never bringing his tears to market. Dickens somewhere

says, characteristically, that 'Robinson Crusoe' is the only very popular work which can be read without a tear from the first page to the last. That is precisely the quality which commends it to this stern reader, who thought that in fiction as in life a man should keep his feelings under lock and key. In spite of his rather peculiar canons of taste, Fitzjames was profoundly interested, even in spite of himself, in some novels constructed on very different principles. In these early articles he falls foul of 'Mdme. de Bovary,'[1] from the point of view of the simple-minded moralist, but he heartily admires Balzac, whom he defends against a similar charge, and in whose records of imaginary criminals—records not so famous in England at that time as they now are—he found an interest almost equal to that of the 'State Trials' and Palmer's case. He could also, I must add, enjoy Dickens's humour as heartily as any one. He was well up in 'Pickwick,' though I don't know whether he would have been equal to Calverley's famous examination-paper, and he had a special liking for the 'Uncommercial Traveller.' But when Dickens deserted his proper function Fitzjames was roused to indignation. The 'little Nell' sentimentalism and the long gallery of melodramatic deathbeds disgusted him, while the assaults upon the governing classes generally stirred his wrath. The satire upon individuals may be all very well in its place, but a man, he said, has no business to set up as the 'regenerator of society' because he is its most 'distinguished buffoon.' He was not picking his words, and 'buffoon' is certainly an injudicious phrase; but the sentiment which it expressed was so characteristic and deeply rooted that I must dwell a little upon its manifestation at this time.

The war between the Saturday reviewers and their antagonists was carried on with a frequent use of the nick-

[1] December 19, 1857.

names 'prig' and 'cynic' upon one side, and 'buffoon' and 'sentimentalist' upon the other. Phrases so employed soon lose all definite meaning, but it is, I think, easy to see what they meant as applied either by or to Fitzjames. The 'comic writers' for him were exponents of the petty and vulgar ideals of the lower middle classes of the day. The world of Dickens's novels was a portrait of the class for which Dickens wrote. It was a world of smug little tradesmen of shallow and half-educated minds, with paltry ambitions, utter ignorance of history and philosophy, shrinking instinctively from all strenuous thought and resenting every attack upon the placid optimism in which it delighted to wrap itself. It had no perception of the doubts and difficulties which beset loftier minds, or any consciousness of the great drama of history in which our generation is only playing its part for the passing hour. Whatever lay beyond its narrow horizon was ignored, or, if accidentally mentioned, treated with ignorant contempt. This was the spirit which revealed itself in the pæans raised over the Exhibition of 1851, accepted by the popular voice of the day as the inauguration of a millennium of peace and free trade. But all its manifestations were marked by the same narrowness. The class had once found a voice for its religious sentiments in Puritanism, with stern conceptions of duty and of a divine order of the universe. But in its present mood it could see the Puritan leaders represented by a wretched Stiggins—a pothouse Tartufe just capable of imposing upon the friends of Mrs. Gamp. Its own religion was that kind of vapid philanthropic sentiment which calls itself undenominational; a creed of maudlin benevolence from which all the deeper and sterner elements of religious belief have been carefully purged away, and which really corresponds to the moods which Mr Pickwick stimulated by indulgence in milk-

punch. When it came face to face with death, and sin, and suffering, it made them mere occasions for displays of sentimentalism, disgusting because such trifling with the most awful subjects shows a hopeless shallowness of nature. Dickens's indulgence in deathbeds meant an effeminate delight in the 'luxury of grief,' revolting in proportion to the solemnity of the topic. This was only another side of the levity with which he treated serious political and social problems. The attitude of mind represented is that of the ordinary newspaper correspondent, who imagines that a letter to the 'Times' is the ultimate remedy for all the evils to which flesh is heir. Dickens's early novels, said Fitzjames, represented an avatar of 'chaff'; and gave with unsurpassable vivacity the genuine fun of a thoroughbred cockney typified by Sam Weller. Sam Weller is delightful in his place; but he is simply impertinent when he fancies that his shrewd mother wit entitles him to speak with authority upon great questions of constitutional reform and national policy. Dickens's later assaults upon the 'Circumlocution Office,' the Court of Chancery, were signal instances of this impatient, irritable, and effeminate levity. Fitzjames elaborated this view in an article upon 'the license of novelists' which appeared in the 'Edinburgh Review' for July 1857. He fell foul of 'Little Dorrit'; but the chief part of the article referred to Charles Reade's 'Never Too Late to Mend.' That novel was briefly a travesty of a recent case in which a prisoner had committed suicide in consequence, as was suggested, of ill-treatment by the authorities of the gaol. The governor had been tried and punished in consequence. Fitzjames gives the actual facts to show how Reade had allowed himself, as a writer of fiction, to exaggerate and distort them, and had at the same time taken the airs of an historian of facts and bragged of his resolution to brand all judges who should

dare to follow the precedent which he denounced. This article, I may notice, included an injudicious reference to the case of the Post Office and Rowland Hill, which was not, I believe, due to Fitzjames himself, and which enabled Dickens to reply with some effect in 'Household Words.'

Dickens's attacks upon the 'Circumlocution Office' and its like were not altogether inconsistent with some opinions upon the English system of government to which, as I shall have to show, Fitzjames himself gave forcible expression in after years. They started, however, from a very different point of view, and for the present he criticised both Dickens and some of the similar denunciations contained in Carlyle's 'Past and Present,' and 'Latter-day Pamphlets.' The assault upon the 'Circumlocution Office' was, I doubt not, especially offensive because 'Barnacle Tite,' and the effete aristocrats who are satirised in 'Little Dorrit,' stood for representatives of Sir James Stephen and his best friends. In fact, I think, Dickens took the view natural to the popular mind, which always embodies a grievance in a concrete image of a wicked and contemptible oppressor intending all the evils which result from his office. A more interesting and appropriate topic for art of a serious kind would be the problem presented by a body of men of the highest ability and integrity who are yet doomed to work a cumbrous and inadequate system. But the popular reformer, to whom everything seems easy and obvious, explains all abuses by attributing them to the deliberate intention of particular fools and knaves. This indicates Fitzjames's position at the time. He was fully conscious of the administrative abuses assailed, and was as ardent on law reform as became a disciple of Bentham. But he could not accept the support of men who thought that judicious reform could be suggested by rough caricatures, and that all difficulties could be appreciated by the

first petty tradesmen who encountered an incidental grievance or by such summary remedies as were to be suggested off-hand by anonymous correspondents. The levity, the ignorance, the hasty and superficial irritability of these reformers, their enormous conceit and imperturbable self-complacency revolted him. English life he declared in the 'Edinburgh Review' is 'too active, English spheres of action too wide, English freedom too deeply rooted, to be endangered by a set of bacchanals drunk with green tea and not protected by petticoats. Boundless luxury,' he thought, 'and thirst for excitement, have raised a set of writers who show a strong sympathy for all that is most opposite to the very foundations of English life.' The 'Saturday Review' articles enlarge upon the same theme. He will not accept legislators whose favourite costume is the cap and bells, or admit that men who 'can make silly women cry can, therefore, dictate principles of law and government.' The defects of our system are due to profound historical causes. 'Freedom and law and established rules have their difficulties,' not perceptible to 'feminine, irritable, noisy minds, always clamouring and shrieking for protection and guidance.' The end to which Dickens would really drive us would be 'pure despotism. No debates to worry effeminate understandings, no laws to prevent judges from deciding according to their own inclination, no forms to prevent officials from dealing with their neighbours as so many parcels of ticketed goods.'[1]

These utterances show the combination of the old Puritanic leaven, to which all trifling and levity is hateful, and the strong patriotic sentiment, to which Dickens in one direction and the politics of Cobden and Bright in the other, appeared as different manifestations of a paltry

[1] See e.g. *Saturday Review*, January 3 and July 11, 1857, 'Mr. Dickens as a Politician,' and 'The *Saturday Review* and Light Literature.'

and narrow indifference to all the great historic aims of the national life. Now, and to some degree always, he strongly sympathised with the patriotism represented by Macaulay.

I need only notice at present certain theological implications. The positivists were beginning to make themselves known, and, for various reasons, were anything but attractive to him. He denounces a manifesto from Mr. Congreve in January 1857, and again from the patriotic side. Mr. Congreve had suggested, among other things, the cession of Gibraltar to Spain, in accordance with his view of international duties. The English nation, exclaims Fitzjames, 'cannot be weighed and measured, and ticketed, and classified, by a narrow understanding and a cold heart.' The 'honest and noble passions of a single nation would blow all Mr. Congreve's schemes to atoms like so many cobwebs. England will never be argued out of Gibraltar except by the *ultima ratio*.' These doctrines, he thinks, are the fruits of abandoning a belief in theology. 'We, too, have a positive philosophy, and its fundamental maxim is that it is wise for men and nations to mind their own business, and do their own duty, and leave the results to God.' The argument seems to be rather questionable; and perhaps one which follows is not altogether satisfactory, though both are characteristic. The Indian Mutiny had moved him deeply, and, in an article called 'Deus Ultionum'[1] he applies one of his doctrines to this case. He holds that a desire for revenge upon the perpetrators of the atrocities (of which, I may observe, exaggerated accounts were then accepted) was perfectly legitimate. Revenge, he urges, is an essential part of the true theory of punishment—a position which he defends by the authority of Bishop Butler. The only

[1] October 17, 1857.

alternative is the theory of simple 'deterrence,' which, as he holds, excludes every moral element of punishment, and supposes man to be a mere 'bag of appetites.'

I have dwelt upon these utterances, not, of course, to consider their value, or as representing his permanent conviction, but simply as illustrating a very deeply rooted sentiment.

His work in the 'Saturday Review' did not exhaust all his literary activity. Between 1856 and 1861 he contributed a few articles to the 'Edinburgh Review,' of which I have already mentioned one. He very naturally turned to the organ in which his father's best-known writings had appeared, and which still enjoyed a high reputation. I believe that the 'Edinburgh Review' still acted upon the precedent set by Jeffrey, according to which a contributor, especially, of course, a young contributor, was regarded as supplying raw material which might be rather arbitrarily altered by the editor. I express no opinion as to the wisdom of that course; but I think that, as a matter of fact, it alienated this contributor in particular. Meanwhile, the father in whose steps he was treading was constantly giving him advice or taking counsel with him during these years. He praised warmly, but with discrimination. The first article in the 'Edinburgh Review' was upon Cavallier, the leader of the Protestant revolt in the Cevennes. The subject, suggested, I fancy, by a trip to the country taken in 1852, was selected less with a view to his own knowledge or aptitudes than by the natural impulse of a young writer to follow the models accepted in his organ. He had selected a picturesque bit of history, capable of treatment after the manner of Macaulay. 'I have read it,' says my father, in words meant to be read to Fitzjames, with the pleasure which it always gives me to read his

vigorous sense, clear and manly style, right-minded and substantially kind-hearted writings. My respect for his understanding has been for a long time steadily increasing, and is very unlikely to be ever diminished. . . . But I shall best prove that respect by saying plainly that I do not like this paper as well as those in which he writes argumentatively, speculatively, and from the resources of his own mind. His power consists in reasoning, in the exposition of truth and fallacies. I will not say, for I do not know, that he wants the art of story-telling, but, taking this as a specimen, it seems to me deficient in the great art of linking together a series of facts in such a manner that the connection between them shall be at once perceptible to the most ignorant and inattentive reader, and shall take easy and irresistible possession of the mind. That is Macaulay's pre-eminent gift.' He goes on to apply this in detail. It may be useful to point out faults now; though his criticisms upon anything which Fitzjames may publish in 1890 shall be 'all saccharine.'

In a letter of April 27, 1856, he shows an alarm which was certainly not unnatural. Fitzjames has been writing in the 'Saturday Review,' in 'Fraser,' the 'National Review,' and elsewhere, besides having on hand a projected law-book. Is he not undertaking too much? 'No variety of intemperance is more evidently doomed to work out its own ill-reward than that which is practised by a bookseller's drudge of the higher order.' He appeals to various precedents, such as Southey, whose brain gave way under the pressure. Editors and publishers soon find out the man who is dependent upon them for support, and 'since the abolition of West India slavery the world has known no more severe servitude than his.' 'Can a man of your age,' he asks, 'have the accumulated

capital of knowledge necessary to stand such a periodical expenditure?' 'What I have read of your writing seems to me to be singularly unequal. At times it is excellent in style and in conception, and evidently flowing from springs pure, copious, and active, and giving promise of great future eminence. At other times the marks of haste, of exhaustion, and being run out of breath, are perceptible to an eye so sensitive as mine is on this subject. I see no reason why you should not become a great writer and one of the teachers of your country-folk, if you will resolve never to write except from a full mind—which is just as essential to literary success as it is to success in singing never to sing but out of well inflated lungs.' He ends by the practical application of an entreaty to make use of the family purse.

The reference to a law-book is explained by a correspondence which is going on at the same period in regard to various literary proposals. My father sketches several plans; he disapproves of a technical treatise, in which he thinks that Fitzjames would be at a disadvantage from the inevitable comparison with his uncle, the serjeant; but he advises some kind of legal history, resembling Hallam's history inverted. In the proposed book the legal aspect should be in the foreground and the political in the background. He expounds at length a scheme which has not been executed, and which would, I think, be exceedingly valuable. It was suggested by his own lectures on French history, though it must be 'six times longer and sixty times more exact and complete.' It is to be a history of the English administrative system from feudal times downwards, giving an account of the development of the machinery for justice, revenue, ecclesiastical affairs, war, trade, colonies, police, and so forth. Each chapter should expound the actual state of things, and

trace the historical development of one department, and would involve a variety of parenthetical inquiries, which should be carefully subordinated to the main purpose. Various hints are given as to the course of investigation that will be necessary. Fitzjames began to work upon this scheme; and his opening chapters fill two or three large manuscript books. The plan was abandoned for one more suitable to his powers. Meanwhile, the literary activity which had alarmed his father was not abated, and, indeed, before very long, was increased.

IV. EDUCATION COMMISSION AND RECORDERSHIP

Another employment for a time gave him work, outside both of his professional and his literary career, though it remained something of a parenthesis. On June 30, 1858, a royal commission was appointed to investigate the state of popular education. The Duke of Newcastle was chairman and the other members were Sir J. T. Coleridge, W. C. Lake (afterwards Dean of Durham), Professor Goldwin Smith, Nassau Senior, Edward Miall, and the Rev. William Rogers, now rector of St. Botolph, Bishopsgate.[1] The Duke of Newcastle was, as I have said, the patron of the editor of the 'Saturday Review,' and perhaps had some interest in that adventure as in the 'Morning Chronicle.' He probably knew of my brother through this connection, and he now proposed him, says Mr. Rogers,[2] as secretary to the commission. The commission began by sending out assistant-commissioners to the selected districts: it afterwards examined a number of experts in educational matters; it sent Mark Pattison and Matthew Arnold to report upon the systems in Germany, France,

[1] Mr. Rogers's *Reminiscences* (1888), 129–156, gives a full and interesting account of this commission.

[2] P. 130.

and Switzerland; it examined all the previous reports presented to the Committee of the Privy Council; it collected a quantity of information from the various societies, from the managers of government, naval and military schools, from schools for paupers and vagrants, and from reformatories; it made an investigation into the state of the charitable endowments, and it compiled a number of statistical tables setting forth the results obtained. 'The man to whom more than to anyone else the country owed a debt of gratitude,' says Mr. Rogers, 'was Fitzjames Stephen. . . Though under thirty, he brought to the task a combination of talents rarely found in any one individual. To his keen insight, wide grasp, accurately balanced judgment, and marvellous aptitude for details, was due much of the success with which we were able to lay down the future lines of popular education. I have often thought it strange that this recognition has not in time past been more publicly made.'

The Commission lasted till June 30, 1861. It published six fat volumes of reports, which are of great value to the historian of education. The progress made in subsequent years gives an appearance of backwardness to what was really a great advance upon previous opinion. The plan of compulsory or free education was summarily dismissed; and a minority of the Commission were of opinion that all State aid should be gradually withdrawn. The majority, however, decided that the system rather required development, although the aim was rather to stimulate voluntary effort than to substitute a State system. They thought that the actual number of children at school was not unsatisfactory, and that the desire for education was very widely spread. Many of the schools, however, were all but worthless, and the great aim should be to improve their quality and secure a satisfactory

teaching of elementary subjects. They proposed that provision should be made for allowing the formation of boards supported by rates in towns and counties; and that the national grant should be distributed on better principles, so as to secure more efficient results. As Mr. Rogers points out, the 'revised code' soon afterwards issued by Mr. Lowe, and the principles adopted in Mr. Forster's Act a few years later, carried out, though they greatly extended, the proposals of the Commission.

It is impossible to say precisely what share my brother had in these results. I find, however, from a correspondence with his old friend Nassau Senior, that he was an advocate of the view finally adopted by the Commission. He also prepared the report, of course under the direction of his superiors, and the labour thrown upon him during the three years of this occupation must have been considerable. He was, however, writing with his old regularity for the 'Saturday Review,' and was attending sessions and circuits with slowly improving prospects. In a letter written at this time I find him remarking that he is at work all the day and half the night. This is in reference to a case with which he was much occupied during 1858–9, and which is characteristic enough to deserve a few words. His articles in the 'Saturday Review' show the keen interest to which he was aroused by any touch of heroism. He is enthusiastic about arctic adventure, and a warm review of Kane's narrative of the American expedition in search of Franklin brought him the friendship of the author, who died during a visit to England soon afterwards. Another arctic explorer was Captain Parker Snow, who sailed in the search expedition sent out by Lady Franklin in 1850. The place in which the remains were afterwards discovered had been revealed to him in a dream; and but for the refusal of his superior

officer to proceed he would have reached the spot. In the year 1854 Captain Snow was sent out by the Patagonian Missionary Society to the place where the unfortunate Allen Gardiner had been starved to death. His crew consisted entirely of 'godly' sailors, who, he says, showed their principles by finding religious reasons for disobeying his orders. Finally Captain Snow was dismissed by an agent of the Society, and, as he maintained, illegally. He published an account of his explorations in Tierra del Fuego, which Fitzjames reviewed enthusiastically. It was long, he said, since he had seen a 'heartier, more genuine, nobler book'; he was tempted to think that Captain Marryat and Kingsley had 'put their heads together to produce a sort of missionary "Peter Simple."' This led to a long correspondence with Captain Snow, who was trying to enforce his claims against the Missionary Society. Fitzjames strongly advised him against legal proceedings, which would, he thought, be fruitless, although Captain Snow had a strong moral claim upon the Society. Captain Snow, however, was not easy to advise, and Fitzjames, thinking him ill-treated, obtained help from several friends and subscribed himself to the Captain's support. After long negotiations the case finally came into court in December 1859, when Fitzjames consented to appear as the Captain's counsel, although he had foreseen the unsuccessful result. He continued to do what he could for the sufferer, to whose honourable, though injudicious conduct he bears a strong testimony, and long afterwards (1879) obtained for him a pension of 40*l.* from the Civil List, which is, I fear, Captain Snow's only support in his old age.[1]

[1] Captain Parker Snow has sent me the correspondence and some other documents. An account of his remarkable career will be found in the *Review of Reviews* for April 1893. The case is reported in the *Times* of December 8, 1859.

In August 1859 Fitzjames was made recorder of Newark. The place, which he held till he went to India in 1869, was worth only 40*l.* a year; but was, as he said, a 'feather in his cap,' and a proof of his having gained a certain footing upon his circuit. It gave him his first experience as a judge, and I may mention a little incident of one of his earliest appearances in that character. He had to sentence a criminal to penal servitude, when the man's wife began to scream; he was touched by her grief, and left a small sum with the mayor to be given to her without mention of his name. The place was, it seems, practically the gift of the Duke of Newcastle; and Bethell, then Attorney-General, wrote to him in favour of Fitzjames's appointment. I am not aware how Bethell came to have any knowledge of him; but Fitzjames had formed a very high opinion of the great lawyer's merits. He showed it when Bethell, then Lord Westbury, was accused of misconduct as Lord Chancellor. He thought that the accusations, if not entirely unfounded, were grossly exaggerated for party purposes. He could not persuade the 'Pall Mall Gazette,' for which he was then writing, to take this view; but upon Westbury's resignation he obtained the insertion of a very cordial eulogy upon the ex-chancellor's merits as a law reformer.

The appointment to the recordership was one of the last pieces of intelligence to give pleasure to my father. Fitzjames had seen much of him during the last year. He had spent some weeks with him at Dorking in the summer of 1858, and had taken a little expedition with him in the spring of 1859. My father injured himself by a walk on his seventieth birthday (January 3, 1859), and his health afterwards showed symptoms of decline. In the autumn he was advised to go to Homburg; and thence, on August 30, he wrote his last letter, criticising a draft of a report

which Fitzjames was preparing for the Education Commission, and suggesting a few sentences which would, he thinks, give greater clearness and emphasis to the main points. Immediately afterwards serious symptoms appeared, due, I believe, to the old break-down of 1847. My father was anxious to return, and started homewards with my mother and sister, who had accompanied him. They got as far as Coblenz, where they were joined by Fitzjames, who had set out upon hearing the news. He was just in time to see his father alive. Sir James Stephen died September 14, 1859, an hour or two after his son's arrival. He was buried at Kensal Green, where his tombstone bears the inscription: 'Be strong and of a good courage; be not afraid, neither be thou dismayed: for the Lord thy God is with thee whithersoever thou goest.' The words (from Joshua i. 9) were chosen because a friend remembered the emphasis with which my father had once dwelt upon them at his family prayers. With the opening words of the same passage my brother concluded the book which expressed his strongest convictions,[1] and summed up his practical doctrine of life. What he felt at the time may be inferred from a striking essay upon the 'Wealth of Nature,' which he contributed to the 'Saturday Review' of September 24, 1859.[2] It may be considered as a sermon upon the text of Gray's reflections in the 'Elegy' upon the 'hearts once pregnant with celestial fire' which lie forgotten in the country churchyard. What a vast work has been done by the unknown! what must have been the aggregate ability of those who, in less than thirty generations, have changed the England of King Alfred into the England of Queen Victoria! and yet how few are remembered! How many actions even, which would be

[1] *Liberty, Equality, Fraternity.*

[2] Reprinted in *Essays by a Barrister.*

gladly remembered, are constantly forgotten? 'The Indian Empire,' he says characteristically, 'is the most marvellous proof of this that the world can supply. A man died not long ago who, at twenty-five years of age, with no previous training, was set to govern a kingdom with absolute power, and who did govern it so wisely and firmly that he literally changed a wilderness into a fruitful land. Probably no one who reads these lines will guess to whom they allude.' I can, however, say that they allude to James Grant Duff (1789–1858), author of the 'History of the Mahrattas,' and father of his friend Sir Mountstuart. Fitzjames had visited the father in Scotland, and greatly admired him. His early career as resident of Sattara sufficiently corresponds to this statement. It is well, as Fitzjames maintained, that things should be as they are. Fame generally injures a man's simplicity; and this 'great reserve fund of ability' acts beneficially upon society at large, and upon the few conspicuous men who are conscious of their debt to their unknown colleagues. It would be a misfortune, therefore, if society affected to class people according to their merits; for, as it is, no one need be ashamed of an obscurity which proves nothing against him. We have the satisfaction of perceiving everywhere traces of skill and power, proving irrefragably that there are among us men 'who ennoble nearly every walk of life, and would have ennobled any.' A similar tone appears in the short life of his father, written in the following year. True success in life, he says, is not measured by general reputation. Sir James Stephen's family will be satisfied by establishing the fact that he did his duty. It was an instance of 'prosperity' that his obscurity 'protected him, and will no doubt effectually protect his memory against unjust censure and ignorant praise.'

The deaths of two old friends of his father's and his

own marked the end of the year. On December 20, 1859, he hears of the death of John Austin, and proposes to attend the funeral, 'as there were few men for whom I had more respect or who deserved it more.' His admiration for Austin was at this time at its warmest.[1] Macaulay died on December 28, 1859; and on January 5, 1860, Fitzjames writes from Derby, where he has been all night composing a 'laudation' of the historian for the 'Saturday Review.'[2] It is 7.45 A.M., and he has just washed and dressed, as it is too late to go to bed before court. 'Tom Macaulay,' as has been seen, had been a model held up to him from infancy, and to the last retained a strong hold upon his affectionate remembrance.

Fitzjames was now completing his thirty-first year, and was emerging into a more independent position. He was in the full flow of energetic and various work, which was to continue with hardly an intermission until strength began to fail. At this period he was employed in the Education Commission, which for some time was meeting every day; he was writing for the 'Saturday Review' and elsewhere; he was also beginning to write an independent book; and he was attending his circuit and sessions regularly and gradually improving his position.[3] The story thus becomes rather complicated. I will first say a little of his professional work during the next few years, and I will then mention three books, which appeared from 1861 to 1863, and were his first independent publications; they will suggest what has to be said of his main lines of thought and work.

[1] See especially his article upon 'Jurisprudence' in the *Edinburgh Review* for October 1861.

[2] Reprinted in *Essays by a Barrister*.

[3] It is characteristic that although in April 1862 I find him saying that he is at the end of 'two years of as hard and unremitting work as ever he did in his life,' I am quite unable to make out why the years should be limited to two: and certainly the work became no lighter afterwards.

V. PROGRESS AT THE BAR

His practice at the bar was improving, though not very steadily or rapidly. 'Those cases, like Snow's or Bacon's,' he observes (Dec. 17, 1859), 'do me hardly any good. . . . I am making a reputation which would be very useful for an older man who already had business, but is to me glory, not gain. I am like a man who has good expectations and little or no income.' Still his position is better: he has made 100*l.* this year against 50*l.* the year before; he is beginning to 'take root,' especially at sessions; and he 'thoroughly delights in his profession.' In March 1860 he reports some high compliments from Mr. Justice Willes in consequence of a good speech; and has had inquiries made about him by attornies. But the attornies, he thinks, will have forgotten him before next circuit. There never was a longer hill than that which barristers have to climb; but 'it is neither a steep nor an unpleasant hill.' In July 1861 he was appointed to a revising barristership in North Derbyshire by Chief Baron Pollock, and was presented with a red bag by his friend Kenneth Macaulay, now leader of the circuit. He makes 100*l.* on circuit, and remarks that this is considered to mark a kind of turning-point. In 1862 things improve again. In July he is employed in three cases of which two were 'glorious triumphs,' and the third, the 'Great Grimsby riot,' which is 'at present a desperate battle,' is the biggest case he has yet had on circuit. The circuit turns out to be his most profitable, so far. On October 20 he reports that he has got pretty well 'to the top of the little hill' of sessions, and is beginning, though cautiously, to think of giving them up and to look forward to a silk gown. In 1863 he has 'a wonderful circuit' (March 20) above 200*l.*, owing partly, it would seem, to Macaulay's

absence, and too good to be repeated. In the summer, however, he has the first circuit in which there has been no improvement. On October 25 he is for once out of spirits. He has had 'miserable luck,' though he thinks in his conscience that it has been due not to his own fault, but to the 'stupidity of juries.' 'There is only one thing,' he says, 'which supports me in this, the belief that God orders all things, and that therefore we can be content and ought to take events as they come, be they small or great. Whenever I turn my thoughts that way it certainly does not seem to me very important whether in this little bit of a life I can accomplish all that I wish—so long as I try to do my best. I have often thought that perhaps one's life may be but a sort of school, in which one learns lessons for a better and larger world, and if so, I can quite understand that the best boys do not get the highest prizes, and that no boy, good or bad, ought to be unhappy about his prizes. There are things I long to do; books I long to write; thoughts and schemes that float before me, looking so near and clear, and yet being, as I feel, so indistinct or distant that I shall never make anything of them. Small ties and little rushings of the mind, briefs and magazine articles, and their like, will clog my wheels day after day and year after year. Yet I cannot altogether blame myself. Looking back on my life, I cannot seriously regret any of the principal steps I have taken in it. Still I do feel more or less disquieted or perturbed—I cannot help it.' Some uncomfortable thoughts could hardly fail to intrude at times when the compliments which he received from the highest authorities failed to be backed by a corresponding recognition from attornies; and at times, I suspect, his spirits were depressed by over-work, of which he was slow to acknowledge the possibility. To work, indeed, he turned for

one chief consolation. He refers incidentally to various significant performances. 'Last night,' he writes from Derby, April 10, 1862, 'I finished a middle at two; and to-day I finished "Superstition"' (an article in the 'Cornhill') 'in a six hours' sitting, during which I had written thirty-two MS. pages straight off. I don't feel at all the worse for it.' On Nov. 14 following he observes that he is 'in first-rate health.' He wrote all night from six till three, got up at 7.30, and walked thirty-one miles; after which he felt 'perfectly fresh and well.' On Jan. 13, 1863, he has a long drive in steady rain, sits up 'laughing and talking' till one; writes a review till 4.45, and next day writes another article in court. On July 17, 1864, he finishes an article upon Newman at 3 A.M., having written as much as would fill sixteen pages of the 'Edinburgh Review'—the longest day's work he had ever done, and feels perfectly well. On March 13, 1865, he gets up at six, writes an article before breakfast, is in court all day, and has a consultation at nine. Early rising was, I think, his commonest plan for encountering a pressure of work; but he had an extraordinary facility for setting to work at a moment's notice. He had a power of eating and sleeping at any time, which he found, as he says, highly convenient. He was equally ready to write before breakfast, or while other people were talking and speechifying all round him in court, or when sitting up all night. And, like a strong man, he rejoiced in his strength, perhaps a little too unreservedly. If he now and then confesses to weariness, it never seemed to be more than a temporary feeling.

Of the cases in which he was engaged at this period I need only mention two—the case of Dr. Rowland Williams, of which I shall speak directly in connection with his published 'defence'; and the case of a man who was con-

victed of murder at Warwick in December 1863. The fellow had cut the throat of a girl who had jilted him. The facts were indisputable, and the only possible defence was insanity. Kenneth Macaulay and Fitzjames were counsel for the defence, but failed, and, as Fitzjames thought, rightly failed, to make good their case. He was, however, deeply moved by the whole affair—the most dramatic, he says, in which he had been engaged. The convict's family were respectable people, and behaved admirably. 'The poor mother sat by me in court and said, "I feel as if I could cling to anyone who could help him," and she put her hand on my arm and held it so that I could feel every beat of her pulse. Her fingers clutched me every time her heart beat. The daughters, too, were dreadfully moved, but behaved with the greatest natural dignity and calmness.' After the conviction Fitzjames felt that the man deserved to be hanged; but felt also bound to help the father in his attempts to get the sentence commuted. He could not himself petition, but he did his best to advise the unfortunate parents. He used to relate that the murderer had written an account of the crime, which it was proposed to produce as a proof of insanity. To Fitzjames it seemed to be a proof only of cold-blooded malignity which would insure the execution of the sentence. He was tormented by the conflict between his compassion and his sense of justice. Ultimately the murderer was reprieved on the ground that he had gone mad after the sentence. Fitzjames had then, he says, an uncomfortable feeling as if he were partly responsible for the blood of the murdered girl. The criminal soon afterwards committed suicide, and so finished the affair.

VI. 'ESSAYS BY A BARRISTER'

I turn now to the literary work which filled every available interstice of time. In the summer of 1862 Fitzjames published 'Essays by a Barrister' (reprinted from the 'Saturday Review'). The essays had appeared in that paper between the end of 1858 and the beginning of 1861. From February 9, 1861, to February 28, 1863, he did not write in the 'Saturday Review.' A secession had taken place, the causes of which I do not precisely know. I believe that the editor wished to put restrictions, which some of his contributors, including Fitzjames, resented, upon the services to be rendered by them to other periodicals. The breach was eventually closed without leaving any ill-feeling behind it. Fitzjames at first felt the relief of not having to write, and resolved to devote himself more exclusively to his profession. But before long he was as hard at work as ever. During 1862 he wrote a good many articles for the 'London Review,' which was started as a rival of the 'Saturday Review.' He found a more permanent outlet for his literary energies in the 'Cornhill Magazine.' It was started by Messrs. Smith & Elder at the beginning of 1860 with Thackeray for editor; and, together with 'Macmillan's Magazine'—its senior by a month—marked a new development of periodical literature. Fitzjames contributed a couple of articles at the end of 1860; and during 1861, 1862, and 1863, wrote eight or nine in a year. These articles (which were never reprinted) continue the vein opened in the 'Essays by a Barrister.' His connection with the 'Magazine' led to very friendly relations with Thackeray, to whose daughters he afterwards came to hold the relation of an affectionate brother. It also led to a connection

with Mr. George Smith, of Smith, Elder & Co., which was to be soon of much importance.

The articles represented the development of the 'middles,' which he considered to be the speciality of himself and his friend Sandars. The middle, originally an article upon some not strictly political topic, had grown in their hands into a kind of lay sermon. For such literature the British public has shown a considerable avidity ever since the days of Addison. In spite of occasional disavowals, it really loves a sermon, and is glad to hear preachers who are not bound by the proprieties of the religious pulpit. Some essayists, like Johnson, have been as solemn as the true clerical performer, and some have diverged into the humorous with Charles Lamb, or the cynical with Hazlitt. At this period the most popular of the lay preachers was probably Sir Arthur Helps, who provided the kind of material—genuine thought set forth with real literary skill and combined with much popular sentiment—which served to convince his readers that they were intelligent and amiable people. The 'Saturday reviewers,' in their quality of 'cynics,' could not go so far in the direction of the popular taste; and their bent was rather to expose than to endorse some of the commonplaces which are dear to the intelligent reader. Probably it was a sense of this peculiarity which made Fitzjames remark when his book appeared that he would bet that it would never reach a second edition. He would, I am sorry to say, have won his bet; and yet I know that the 'Essays by a Barrister,' though never widely circulated, have been highly valued by a small circle of readers. The explanation of their fate is not, I think, hard to give. They have, I think, really great merits. They contain more real thought than most books of the kind; they are often very forcibly expressed; and they unmistakably

reflect very genuine and very strong convictions. Unluckily, they maintain just the kind of views which the congregation most easily gathered round such a pulpit is very much inclined to regard with suspicion or with actual dislike.

An essay, for example, upon 'doing good' is in fact a recast of the paper which decided his choice of a profession. It is intended to show that philanthropists of the Exeter Hall variety are apt to claim a monopoly of 'doing good' which does not belong to them, and are inclined to be conceited in consequence. The ordinary pursuits are equally necessary and useful. The stockbroker and the publican are doing good in the sense of being 'useful' as much as the most zealous 'clergyman or sister of mercy.' Medicine does good, but the butcher and the baker are still more necessary than the doctor. We could get on without schools or hospitals, but not without the loom and the plough. The philanthropist, therefore, must not despise the man who does a duty even more essential than those generally called benevolent, though making less demand on the 'kindly and gentle parts of our nature.' A man should choose his post according to his character. It is not a duty to have warm feelings, though it may be a misfortune not to have them; and a 'cold, stern man' who should try to warm up his feelings would either be cruelly mortified or become an intolerable hypocrite. It is a gross injustice to such a man, who does his duty in the station fittest to his powers, when he is called by implication selfish and indifferent to the public good. 'The injustice, however, is one which does little harm to those who suffer under it, for they are a thick-skinned and long-enduring generation, whose comfort is not much affected one way or the other by the opinion of others.'

This, like Fitzjames's other bits of self-portraiture, is

not to be accepted too literally. So taken, it confounds, I think, coldness and harshness with a very different quality, a want of quick and versatile sympathy, and 'thickness of skin' with the pride which would not admit, even to itself, any tendency to over-sensibility. But it represents more or less the tone which came naturally to him, and explains the want of corresponding acceptability to his readers. He denounces the quality for which 'geniality' had become the accepted nickname. The geniality, whether of Dickens or Kingsley, was often, he thought, disgusting and offensive. It gives a false view of life. 'Enjoyment forms a small and unimportant element in the life of most men.' Life, he thinks, is 'satisfactory' but 'enjoyment casual and transitory.' 'Geniality,' therefore, should be only an occasional element; habitually indulged and artificially introduced, it becomes as nauseous as sweetmeats mixed with bread and cheese. To the more serious person, much of the popular literature of the day suggests Solomon's words: 'I said of laughter, it is mad; and of mirth what doeth it?' So the talk of progress seems to him to express the ideal of a moral 'lubberland.' Six thousand years of trial and suffering, according to these prophets, are to result in a 'perpetual succession of comfortable shopkeepers.' The supposition is 'so revolting to the moral sense that it would be difficult to reconcile it with any belief at all in a Divine Providence.' You are beginning, he declares after Carlyle's account of Robespierre, 'to be a bore with your nineteenth century.' Our life, he says elsewhere ('Christian Optimism'), is like 'standing on a narrow strip of shore, waiting till the tide which has washed away hundreds of millions of our fellows shall wash us away also into a country of which there are no charts and from which there is no return. What little we have reason to believe about that unseen

world is that it exists, that it contains extremes of good and evil, awful and mysterious beyond human conception, and that these tremendous possibilities are connected with our conduct here. It is surely wiser and more manly to walk silently by the shore of that silent sea, than to boast with puerile exultation over the little sand castles which we have employed our short leisure in building up. Life can never be matter of exultation, nor can the progress of arts and sciences ever fill the heart of a man who has a heart to be filled.' The value of all human labours is that of schoolboys' lessons, 'worth nothing at all except as a task and a discipline.' Life and death are greater and older than steam engines and cotton mills. 'Why mankind was created at all, why we continue to exist, what has become of all that vast multitude which has passed, with more or less sin and misery, through this mysterious earth, and what will become of those vaster multitudes which are treading and will tread the same wonderful path?—these are the great insoluble problems which ought to be seldom mentioned but never forgotten. Strange as it may appear to popular lecturers, they do make it seem rather unimportant whether, on an average, there is a little more or less good nature, a little more or less comfort, and a little more or less knowledge in the world.' Such thoughts were indeed often with him, though seldom uttered. The death of a commonplace barrister about this time makes him remark in a letter that the sudden contact with the end of one's journey is not unwelcome. The thought that the man went straight from the George IV. Hotel to 'a world of ineffable mysteries is one of the strangest that can be conceived.'

I have quoted enough from the essays to indicate the most characteristic vein of thought. They might have been more popular had he either sympathised more fully

with popular sentiment or given fuller and more frequent expression to his antipathy. But, it is only at times that he cares to lay bare his strongest convictions; and the ordinary reader finds himself in company with a stern, proud man who obviously thinks him foolish but scarcely worth denouncing for his folly. Sturdy common sense combined with a proud reserve which only yields at rare intervals, and then, as it were, under protest, to the expression of deeper feeling, does not give the popular tone. Some of the 'Cornhill' articles were well received, especially the first, upon 'Luxury' (September 1860), which is not, as such a title would now suggest, concerned with socialism, but is another variation upon the theme of the pettiness of modern ideals and the effeminate idolatry of the comfortable.

These articles deal with many other topics: with the legal questions in which he is always interested, such as 'the morality of advocacy' and with the theory of evidence, with various popular commonplaces about moral and social problems, with the 'spirit-rapping' then popular, with various speculations about history, and with some of the books in which he was always interested. One is the 'laudation' of Macaulay which I have noticed, and he criticises Carlyle and speaks with warm respect of Hallam. Here and there, too, are certain philosophical speculations, of which I need only say that they show his thorough adherence to the principles of Mill's 'Logic.' He is always on the look-out for the 'intuitionist' or the believer in 'innate ideas,' the bugbears of the Mill school. In an article upon Mansel's 'Metaphysics' he endeavours to show that even the 'necessary truths' of mathematics are mere statements of uniform experience, which may differ in another world. This argument was adopted by Mill in his 'examination of

Sir W. Hamilton's philosophy.'[1] I cannot say that I think it a fortunate suggestion; and I only notice it as an indication of Fitzjames's intellectual position.

The 'Cornhill' articles had to be written under the moral code proper to a popular magazine, the first commandment of which is 'Thou shalt not shock a young lady.' Fitzjames felt this rather uncomfortably, and he was not altogether displeased, as he clearly had no right to be surprised, when Mr. George Smith, the proprietor of the magazine, suggested to him in December 1862 the superior merits of 'light and amusing' articles, which, says Fitzjames, are 'just those which give me most trouble and teach me least.' They are 'wretched' things to occupy a man of 'any sort of mind.' Mr. Smith, as he says a year afterwards, is the 'kindest and most liberal of masters,' but he feels the drudgery of such work. Reading Bossuet (February 28, 1864), he observes that the works are so 'powerful and magnificent in their way' that they make me feel a sort of hatred for 'the trumpery that I pass my time in manufacturing.' It makes him 'sad to read great books, and it is almost equally sad not to read them.' He feels 'tied by the leg' and longs to write something worth writing; he believes that he might do more by a better economy of his time; but 'it is hopeless to try to write eight hours a day.' He feels, too (July 21, 1864), that the great bulk of a barrister's work is 'poor stuff.' It is a 'good vigorous trade' which braces 'the moral and intellectual muscles' but he wishes for more. No doubt he was tired, for he records for once enjoying a day of thorough idleness a month later, lying on the grass at a cricket match, and talking of prize-fighting. He is much impressed soon afterwards by a sermon on the text, 'I will give you rest'; but his spirits are rapidly reviving.

[1] Chap. vi. in first edition, p. 69.

In March 1865 he says, 'I cannot tell you how happy and prosperous I feel on the whole. . . . I have never felt so well occupied and so thoroughly fearless and happy on circuit before.' This was partly due to improvement in other respects. Circuits were improving. He had given up the 'Cornhill,' and was finding an outlet in 'Fraser' for much that had been filling his mind. Other prospects were opening of which I shall soon have to speak.

VII. DEFENCE OF DR. WILLIAMS

I go back to another book which was closely connected with his professional prospects and his intellectual interests. His 'Defence of Dr. Rowland Williams' appeared in the spring of 1862, and represented some very energetic and to him intensely interesting work. Certain clergymen of the Church of England had discovered—what had been known to other people for several generations—that there were mistakes in the Bible. They inferred that it was desirable to open their minds to free criticism, and that the Bible, as Jowett said, should be read 'like any other book.' The result was the publication in 1860 of 'Essays and Reviews,' which after a time created a turmoil which seems a little astonishing to the present generation. Orthodox divines have, indeed, adopted many of the conclusions which startled their predecessors, though it remains to be seen what will be the results of the new wine in the old bottles. The orthodoxy of 1860, at any rate, was scandalised, and tried, as usual, to expel the obnoxious element from the Church. The trial of Dr. Rowland Williams in the Arches Court of Canterbury in December 1861 was one result of the agitation, and Fitzjames appeared as his counsel. He had long been familiar with the writings of the school which

was being assailed. In 1855 he is reading Jowett's 'Commentary on the Epistle to the Romans,' and calls it a 'kind, gentle Christian book'—far more orthodox than he can himself pretend to be. Characteristically he is puzzled and made 'unhappy' by finding that a good and honest man claims and 'actually seems to possess a knowledge of the relations between God and man,' on the strength of certain sensibilities which place a gulf between him and his neighbours. He probably met Jowett in some of his visits to Henry Smith at Oxford. At the end of 1861 and afterwards he speaks of meetings with Jowett and Stanley, for both of whom he expresses a very warm regard.

During the latter part of 1861 he was hard at work upon the preparation of his speech on behalf of Dr. Williams, which was published soon after the trial. Without dwelling at any length upon the particular points involved, I may say that the main issue was very simple. The principal charge against Dr. Williams was that he had denied the inspiration of the Bible in the sense in which 'inspiration' was understood by his prosecutors. He had in particular denied that Jonah and Daniel were the authors of the books which pass under their names, and he had disputed the canonicity of the Epistle to the Hebrews. Fitzjames lays down as his first principle that the question is purely legal; that is, that it is a question, not whether Dr. Williams's doctrines were true, but whether they were such as were forbidden by law to be uttered by a clergyman. Secondly, the law was to be found in the Thirty-nine Articles, the rubrics, and formularies, not, as the prosecutors alleged, in passages from Scripture read in the services—a proposition which would introduce the whole problem of truth or error. Thirdly, he urged, the Articles had

designedly left it open to clergymen to hold that the Bible 'contains' but does not 'constitute' the revelation which must no doubt be regarded as divine. In this respect the Articles are contrasted with the Westminster Confession, which affirms explicitly the absolute and ultimate authority of the Bible. No one on that assumption may go behind the sacred record; and no question can be raised as to the validity of anything once admitted to form part of the sacred volume. The Anglican clergy, on the contrary, are at liberty to apply criticism freely in order to discriminate between that part of the Bible which is and that which is not part of divine revelation. Finally, a long series of authorities from Hooker to Bishop Hampden is adduced to prove that, in point of fact, our most learned divines had constantly taken advantage of this liberty; and established, so to speak, a right of way to all the results of criticism. Of course, as Fitzjames points out, the enormous increase of knowledge, critical and scientific, had led to very different results in the later period. But he argues that the principle was identical, and that it was therefore impossible to draw any line which should condemn Dr. Williams for rejecting whole books, or denying the existence of almost any genuine predictions in the Hebrew prophecies without condemning the more trifling concessions of the same kind made by Hooker or Chillingworth. If I may remove one stone from the building, am I not at liberty to remove any stone which proves to be superfluous? The argument, though forcible and learned, was not in the first instance quite successful. Dr. Williams was convicted upon two counts; though he afterwards (1864) succeeded in obtaining an acquittal upon them also on an appeal to the committee of the Privy Council. Lord Westbury gave judgment, and, as was said, deprived the clergy of the Church of England

of their 'last hopes of eternal damnation.' On the last occasion Dr. Williams defended himself.

The case increased Fitzjames's general reputation and led to his being consulted in some similar cases, though it brought little immediate result in the shape of briefs. For my purpose the most important result is the indication afforded of his own religious position. He argues the question as a matter of law; but not in the sense of reducing it to a set of legal quibbles or technical subtleties. The prosecutors have appealed to the law, and to the law they must go; but the law secures to his client the liberty of uttering his conscientious convictions. Dr. Williams, he says, 'would rather lose his living as an honest man than retain it by sneaking out of his opinions like a knave and a liar.'[1] He will therefore take a bold course and lay down broad principles. He will not find subterfuges and loopholes of escape; but admit at once that his client has said things startling to the ignorant, but that he has said them because he had a right to say them. The main right is briefly the right to criticise the Bible freely. Fitzjames admits that he has to run the risk of apparently disparaging that 'most holy volume, which from his earliest infancy he has been taught to revere as the choicest gift of God to man, as the guide of his conduct here, the foundation of his hopes hereafter.'[2] He declares that the articles were framed with the confidence which has been 'justified by the experience of three centuries,' and will, he hopes, be

[1] Dr. Williams printed privately some *Hints to my Counsel in the Court of Arches*, of which Mrs. Williams has kindly sent me a copy. He declares that he 'accepts the Articles as they are, and claims to teach them with fidelity and clearness unsurpassed by living man.' No one, I think, can doubt his perfect sincerity. The 'hints' probably suggested some of the quotations and arguments in my brother's defence'; but there is no close coincidence. Dr. Williams cordially expressed his satisfaction with his counsel's performance.

[2] *Defence*, pp. 19, 20.

justified 'so long as it pleases God to continue the existence of the human race,' that the Scripture stands upon a foundation irremovable by any efforts of criticism or interpretation.[1] The principle which he defends, (that the Bible *contains, but does not constitute revelation*) is that upon which the divines of the eighteenth century based their 'triumphant defence of Christianity against the deists' of the period. I am certain that Fitzjames, though speaking as an advocate, was also uttering his own convictions in these words which at a later period he would have been quite unable to adopt. I happened at the time to have a personal interest in the subject, and I remember putting to him a question to this effect: Your legal argument may be triumphant; but how about the moral argument? A clergyman may have a right to express certain opinions; but can you hold that a clergyman who holds those opinions, and holds also what they necessarily imply, can continue, as an honest man, to discharge his functions? As often happens, I remember my share in our talk much more clearly than I remember his; but he was, I know, startled, and, as I fancied, had scarcely contemplated the very obvious application of his principles. I have now seen, however, a very full and confidential answer given about the same time to a friend who had consulted him upon the same topic. As I have always found, his most confidential utterances are identical in substance with all that he said publicly, although they go into more personal applications.[2] The main purpose of this paper is to convince a lady that she may rightfully believe in the doctrines of the Church of England, although she does not feel herself able to go into the various metaphysical

[1] *Defence*, p. 108

[2] The substance of much of this paper is given in an article called 'Women and Scepticism' in *Fraser's Magazine* for December 1863.

and critical problems involved. The argument shows the way in which his religious beliefs were combined with his Benthamism. He proves, for example, that we should believe the truth by the argument that true belief is 'useful.' Conversely the utility of a belief is a presumption that it contains much truth. Hence the prolonged existence of a Church and its admitted utility afford a presumption that its doctrines are true as the success of a political constitution is a reason for believing the theory upon which it is built. This is enough to justify the unlearned for accepting the creed of the Church to which they belong, just as they have to accept the opinions of a lawyer or of a physician in matters of health and business. They must not, indeed, accept what shocks their consciences, nor allow 'an intelligible absurdity' to be passed off as a 'sacred mystery.' The popular doctrines of hell and of the atonement come under this head; but he still refers to Coleridge for an account of such doctrines, which appears to him 'quite satisfactory.' The Church of England, however, lays so little stress upon points of dogmatic theology that its yoke will be tolerable. Combined with this argument is a very strong profession of his own belief. The belief in a moral governor of the universe seems to him as ennobling as all other beliefs 'put together,' and 'more precious.' Although the difficulty suggested by the prevalence of evil is 'inimical to all levity,' yet he thinks that it would be 'unreasonable and degrading' not to hold the doctrine itself. And, finally, he declares that he accepts two doctrines of 'unspeakable importance.' He prays frequently, and at times fervently, though not for specific objects, and believes that his prayers are answered. And further, he is convinced of a 'superintending Providence,' which has throughout affected his life. No argument

that he has ever read or heard has weighed with him a quarter as much as his own personal experience in this matter.

The paper, written with the most evident sincerity, speaks so strongly of beliefs which he rarely avowed in public that I feel it almost wrong to draw aside his habitual veil of reticence. I do so, though briefly, because some of his friends who remember his early orthodoxy were surprised by the contrast of what they call his aggressive unbelief in later life. It is therefore necessary to show that at this period he had some strong positive convictions, which indeed, though changed in later years, continued to influence his mind. He was also persuaded that the Church of England, guarded by the decisions of lawyers, could be kept sufficiently open to admit the gradual infusion of rational belief. I must further remark that his belief, whatever may be thought of it, represented so powerful a sentiment that I must dwell for a little upon its general characteristics. For this reason I will speak here of the series of articles in 'Fraser' to which I have already referred. During the next few years, 1864 to 1869, he wrote several, especially in 1864–5, which he apparently intended to collect. The most significant of these is an article upon Newman's 'Apologia,' which appeared in September 1864.

Fitzjames had some personal acquaintance with Newman. He had been taken to the Oratory, I believe by his friend Grant Duff; and had of course been impressed by Newman's personal charm. Fitzjames, however, was not the man to be awed by any reputation into reticence. He had a right to ask for a serious answer to serious questions. Newman represented claims which he absolutely rejected, but which he desired fully to understand. He had on one occasion a conversation which he

frequently mentioned in later years. The substance, as I gather from one of his letters, was to this effect: 'You say,' said Fitzjames, 'that it is my duty to treat you and your Church as the agents and mouthpiece of Almighty God?' 'Yes.' 'Then give me anything like a reasonable ground for believing that you are what you claim to be.' Newman appears to have replied in substance that he could not argue with a man who differed so completely upon first principles. Fitzjames took this as practically amounting to the admission that Newman had 'nothing to say to anyone who did not go three-fourths of the way to meet him.' 'I said at last,' he proceeds, '"If Jesus Christ were here, could He say no more than you do?" "I suppose you to mean that if He could, I ought to be able to give you what you ask?" "Certainly, for you profess to be His authorised agent, and call upon me to believe you on that ground. Prove it!" All he could say was, "I cannot work miracles," to which I replied, "I did not ask for miracles but for proofs." He had absolutely nothing to say.'

I need hardly say that Newman's report of the conversation would probably have differed from this, which gives a rough summary from Fitzjames's later recollections. I do not hesitate, however, to express my own belief that it gives a substantially accurate account; and that the reason why Newman had nothing to say is simply that there was nothing to be said. Persons who suppose that a man of Newman's genius in stating an argument must have been a great logician, and who further imagine that a great logician shows his power by a capacity of deducing any conclusions from any premises, will of course deny that statement. To argue the general question involved would be irrelevant. What I am concerned to point out is simply the inapplicability of Newman's argument to one in Fitzjames's state of mind. The result will, I think, show

very clearly what was his real position both now and in later years.

His essay on the 'Apologia' insists in the first place upon a characteristic of Newman's writings, which has been frequently pointed out by others; that is, that they are essentially sceptical. The author reaches orthodox conclusions by arguments which are really fatal to them. The legitimate inference from an argument does not depend upon the intention of the arguer; and the true tendency of Newman's reasonings appears simply by translating them into impartial language. Fitzjames dwells especially upon Newman's treatment of the fundamental doctrine of the existence of a God. Newman, for example, defends a belief in transubstantiation by dwelling upon the antinomies involved in the argument for a Deity. As, in one case, we cannot give any meaning to an existence without a beginning, so, in the other, we can attach no meaning to the word 'substance.' If the analogy be correct, the true inference would be that both doctrines are meaningless aggregations of words, and therefore not capable of being in any true sense either 'believed' or 'disbelieved.' So again the view of the external world suggests to Newman 'atheism, pantheism, or polytheism.' Almighty benevolence has created a world of intelligent beings, most of whom are doomed to eternal tortures, and having become incarnate in order to save us, has altogether failed in His purpose. The inference is, says Fitzjames, that 'if Dr. Newman was thoroughly honest he would become an atheist.' The existence of evil is, in fact, an argument against the goodness of God; though it may be, as Fitzjames thinks it is in fact, overbalanced by other evidence. But if it be true that God has created an immense proportion of men to be eternally tormented in hell fire, it is nonsense to call Him benevolent,

and the explanation by a supposed 'catastrophe' is a mere evasion.

In spite of this, Newman professes himself, and of course in all sincerity, as much convinced of the existence of God as he is of his own existence. The 'objections,' as he puts it, are only 'difficulties'; they make it hard to understand the theory, but are no more reasons for rejecting it than would be the difficulty which a non-mathematical mind finds in understanding the differential calculus for rejecting 'Taylor's theorem.' And, so far, the difference is rather in the process than the conclusion. Newman believes in God on the testimony of an inner voice, so conclusive and imperative that he can dismiss all apparently contradictory facts, and even afford, for controversial purposes, to exaggerate them. Fitzjames, as a sound believer in Mill's logic, makes the facts the base of his whole argumentative structure, though he thinks that the evidence for a benevolent Deity is much stronger than the evidence against it. When we come to the narrower question of the truth of Christianity the difference is vital. Newman's course had, in fact, been decided by a belief, however generated, in the 'principle of dogma,' and on the other hand by the gradual discovery of the unsatisfactory nature of the old-fashioned Protestant argument as interpreted by Paley and the evidence writers. For that argument, as has been seen, Fitzjames had still a considerable respect. But no one had insisted more energetically upon its practical insufficiency, at any rate, than Newman. He had declared man's reason to be so corrupt, that one who becomes a Protestant is on a slope which will inevitably lead through Socinianism to Atheism. To prove his claims, therefore, to a Protestant by appealing to such grounds as the testimony of the gospels, was obviously impossible. That evidence, taken by itself, especially as

a sound utilitarian lawyer would take it, was, on his own showing, practically insufficient to prove the truth of the alleged facts, and, much more, to base upon them the claim of the infallible Church. It is precisely the insufficiency of this view that gives force to the demand for a supernatural authority.

How, then, was Newman to answer an inquirer? Obviously, on his own ground, he must appeal to the *à priori* arguments afforded by the instinctive desire of men for an authoritative body, and to the satisfaction of their conscience by the dogmas revealed through its agency. Then the question occurs: Is this a logical argument, or an appeal from argument to feeling? Is it not, as Fitzjames thinks, a roundabout way of saying, 'I believe in this system because it suits my tastes and feelings, and because I consider truth unattainable'? If so, persuasion is substituted for reasoning: and the force of persuasion depends upon the constitution of the person to be persuaded. Now the arguments, if they be called arguments, which Newman could address to Fitzjames upon this topic were obviously inapplicable. The dogmas, says Newman, are congenial to the conscience. The conscience demands an avenging Deity, and therefore a doctrine of sacrifice. But such an appeal fails if, in point of fact, a man's conscience rises against the dogma. This was Fitzjames's position. 'Large parts of the (Catholic) theology,' he says in a letter, 'are not only silly, but, I think, cruel and immoral to the last degree. I think the doctrine of eternal damnation so wicked and so cruel that I would as soon teach my children to lie and steal as to believe in it.' This was to express one of his strongest convictions. In a review of Theodore Parker's works,[1] written shortly before, he had to deal with

[1] *Fraser's Magazine*, February 1864.

an advocate of that 'intuitional' theory which he always repudiated. But Parker at least appealed to reason, and had, by a different path, reached moral conclusions with with Fitzjames thoroughly agreed. Doctrines, says Fitzjames, which *prima facie* conflict with our belief in a benevolent Creator, such as the theory of vicarious suffering, are not indeed capable of being refuted by Parker's summary method; but he fully agrees that they could only be established by very strong evidence, which he obviously does not believe to exist. To appeal, then, to the conscience on behalf of the very doctrine which has been destroyed by the revolt of our moral feelings is obviously impossible. Newman, when he notices that the modern world rejects the sacrifice theory, explains it by saying that the conscience of the modern world has decayed. But it is a mere playing fast and loose with logic when you deny the authority of the court to which you appeal as soon as it decides against you. To Fitzjames, at any rate, who regarded these doctrines as radically immoral, the argument could have no application.

Finally, the desire for some infallible guide in the midst of our doubts and difficulties is equally wide of the mark. It is so because, though the desire for truth is perfectly natural or highly commendable, there is not the slightest ground for supposing that it implies any royal road to truth. In all other matters, political, social, and physical, we have to blunder slowly into truth by harsh experience. Why not in religious matters? Upon this Fitzjames frequently insists. Deny any *à priori* probability of such guidance, he says, and the Catholic argument vanishes. Moreover, as he argues at length in his review of the 'Apologia,' it is absolutely inconsistent with facts. What is the use of saying that man's nature demands an infallible guide, when, as a matter of admitted fact, such a guide

has only been granted to one small fraction of mankind? For thousands of years, and over the great majority of the present world, you admit yourselves that no such guide exists. What, then, is the value of an *à priori* argument that it must exist? When Newman has to do with the existence of the Greek Church, he admits it to be inconsistent with his theory, but discovers it to be a 'difficulty' instead of an 'objection.' That is to say that an argument which you cannot answer is to be dismissed on pretence of being only a 'difficulty,' as nonsense is to be admitted under the name of a 'mystery.' If you argued in that way in a court of justice, and, because you had decided a case one way, refused to admit evidence for the other view, what would be the value of your decision?

I cannot here argue the justice of this view of Newman's theories, though personally I think it just. But it is, in any case, eminently characteristic. Fitzjames, like Newman, had been much influenced by Butler. Both of them, after a fashion, accept Butler's famous saying that 'probability is the guide of life.' Newman, believing in the necessity of dogma, holds that we are justified in transmuting the belief corresponding to probability into such 'certitude' as corresponds to demonstration. He does so by the help of appeals to our conscience, which, for the reasons just given, fail to have any force for his opponent. Fitzjames adhered steadily to Butler's doctrine. There is, he says, a probability of the truth of the great religious doctrines—of the existence of a God and a soul; and, therefore, of the correctness of the belief that this world is a school or a preparation for something higher and better. No one could speak more emphatically than he often did of the vast importance of these doctrines. To hold them, he says, makes all the difference between a man and a beast. But his almost passionate assertion of

this opinion would never lead him to over-estimate the evidence in its favour. We do not know the truth of these doctrines ; we only know that they are probably true, and that probability is and must be enough for us ; we must not torture our guesses into a sham appearance of infallible reasoning, nor call them self-evident because we cannot prove them, nor try to transfer the case from the court of reason to the court of sentiment or emotion.

I might say, if I wished to be paradoxical, that this doctrine seems strange precisely because it is so common. It is what most people who think at all believe, but what nobody likes to avow. We have become so accustomed to the assertion that it is a duty for the ignorant to hold with unequivocal faith doctrines which are notoriously the very centres of philosophical doubt, that it is hard to believe that a man can regard them as at once important and incapable of strict proof. Fitzjames naturally appears to the orthodox as an unbeliever, because he admits the doubt. He replies to one such charge that the 'broad general doctrines, which are the only consolation in death and the only solid sanction of morality, never have been, and, please God, never shall be, treated in these columns in any other spirit than that of profound reverence and faith.'[1] Yet he would not say, for he did not think, that those doctrines could be demonstrated. It was the odd thing about your brother, said his old friend T. C. Sandars to me, that he would bring one face to face with a hopeless antinomy, and instead of trying, like most of us, to patch it up somehow, would conclude, 'Now let us go to breakfast.' Some of us discover a supernatural authority in these cases ; others think that the doubt which besets these doctrines results from a vain effort to transcend the con-

[1] *Pall Mall Gazette*, October 2, 1867. I shall speak of his contributions to this paper presently.

ditions of our intelligence, and that we should give up the attempt to solve them. Most men to whom they occur resolve that if they cannot answer their doubts they can keep them out of sight, even of themselves. Fitzjames was peculiar in frankly admitting the desirability of knowledge, which he yet admitted, with equal frankness, to be unattainable. And, for various reasons, partly from natural pugnacity, he was more frequently engaged in exposing sham substitutes for logic than in expounding his own grounds for believing in the probability. His own view was given most strikingly in a little allegory which I shall slightly condense, and which will, I think, sufficiently explain his real position in these matters. It concludes a review of a pamphlet by William Thomson, then Archbishop of York, upon the 'Limits of Philosophical Enquiry.'[1]

I dreamt, he says, after Bunyan's fashion, that I was in the cabin of a ship, handsomely furnished and lighted. A number of people were expounding the objects of the voyage and the principles of navigation. They were contradicting each other eagerly, but each maintained that the success of the voyage depended absolutely upon the adoption of his own plan. The charts to which they appealed were in many places confused and contradictory. They said that they were proclaiming the best of news, but the substance of it was that when we reached port most of us would be thrown into a dungeon and put to death by lingering torments. Some, indeed, would receive different treatment; but they could not say why, though all agreed in extolling the wisdom and mercy of the Sovereign of the country. Saddened and confused I escaped to the deck, and found myself somehow enrolled in the crew. The prospect was unlike the accounts given

[1] *Pall Mall Gazette*, November 26, 1868.

in the cabin. There was no sun ; we had but a faint starlight, and there were occasionally glimpses of land and of what might be lights on shore, which yet were pronounced by some of the crew to be mere illusions. They held that the best thing to be done was to let the ship drive as she would, without trying to keep her on what was understood to be her course. For 'the strangest thing on that strange ship was the fact that there was such a course.' Many theories were offered about this, none quite satisfactory ; but it was understood that the ship was to be steered due north. The best and bravest and wisest of the crew would dare the most terrible dangers, even from their comrades, to keep her on her course. Putting these things together, and noting that the ship was obviously framed and equipped for the voyage, I could not help feeling that there was a port somewhere, though I doubted the wisdom of those who professed to know all about it. I resolved to do my duty, in the hope that it would turn out to have been my duty, and I then felt that there was something bracing in the mystery by which we were surrounded, and that, at all events, ignorance honestly admitted and courageously faced, and rough duty vigorously done, was far better than the sham knowledge and the bitter quarrels of the sickly cabin and glaring lamplight from which I had escaped.

I need add no exposition of a parable which gives his essential doctrine more forcibly than I could do it. I will only add that he remained upon good terms with Newman, who had, as he heard, spoken of his article as honest, plain-spoken, and fair to him. He hopes, as he says upon this, to see the old man and talk matters over with him—a phrase which probably anticipates the interview of which I have spoken. Newman afterwards (September 9, 1866) writes to him in a friendly way, and gives him a statement

of certain points of Catholic moral theology. They seem to have met again, but without further argument.

Fitzjames wrote various articles in 'Fraser' attacking Manning, and criticising among other writings Mr. Lecky's 'Rationalism' (very favourably), and Professor Seeley's then anonymous 'Ecce Homo.' He thinks that the author is a 'sheep in wolf's clothing,' and that his views dissolve into mist when closely examined. I need not give any account of these articles, but I may notice a personal connection which was involved. At this time Mr. Froude was editor of 'Fraser,' a circumstance which doubtless recommended the organ. At what time he became acquainted with Fitzjames I am unable to say; but the acquaintanceship ripened into one of his closest friendships. They had certain intellectual sympathies; and it would be hard to say which of them had the most unequivocal hatred of popery. Here again, however, the friendship was compatible with, or stimulated by, great contrasts of temperament. No one could be blind to Froude's great personal charm whenever he chose to exert it; but many people had the feeling that it was not easy to be on such terms as to know the real man. There were certain outworks of reserve and shyness to be surmounted, and they indicated keen sensibilities which might be unintentionally shocked. But to such a character there is often a great charm in the plain, downright ways of a masculine friend, who speaks what he thinks without reserve and without any covert intention. Froude and Fitzjames, in any case, became warmly attached; Froude thoroughly appreciated Fitzjames's fine qualities, and Fitzjames could not but delight in Froude's cordial sympathy.[1] Fitzjames often stayed with him in

[1] Mr. Froude promised me some recollections of this intimacy; but the promise was dissolved by his death in 1894.

later years, both in Ireland and Devonshire: he took a share in the fishing, shooting, and yachting in which Froude delighted; and if he could not rival his friend's skill as a sportsman admired it heartily, delighted in pouring out his thoughts about all matters, and, as Froude told me, recommended himself to such companions as gamekeepers and fishermen by his hearty and unaffected interest in their pursuits.

Along with this friendship I must mention the friendship with Carlyle. Carlyle had some intercourse with my father in the 'fifties.' My father, indeed, had thought it proper to explain, in a rather elaborate letter after an early conversation, that he did not sympathise with one of Carlyle's diatribes against the Church of England, though he had not liked to protest at the moment. Carlyle responded very courteously and asked for further meetings. His view of my father was coloured by some of his usual severity, but was not intentionally disparaging.

Fitzjames, on his first call, had been received by Mrs. Carlyle, who ordered him off the premises on suspicion of being an American celebrity hunter. He submitted so peacefully that she relented; called him back, and, discovering his name, apologised for her wrath. I cannot fix the dates, but during these years Fitzjames gradually came to be very intimate with her husband. Froude and he were often companions of the old gentleman on some of his walks, though Fitzjames's opportunities were limited by his many engagements. I may here say that it would, I think, be easy to exaggerate the effects of this influence. In later years Fitzjames, indeed, came to sympathise with many of Carlyle's denunciations of the British Constitution and Parliamentary Government. I think it probable that he was encouraged in this view by the fiery jeremiads of the older man. He felt that he had

an eminent associate in condemning much that was a general object of admiration. But he had reached his own conclusions by an independent path. From Carlyle he was separated by his adherence to Mill's philosophical and ethical principles. He was never, in Carlyle's phrase, a 'mystic'; and his common sense and knowledge of practical affairs made many of Carlyle's doctrines appear fantastic and extravagant. The socialistic element of Carlyle's works, of which Mr. Ruskin has become the expositor, was altogether against his principles. In walking with Carlyle he said that it was desirable to steer the old gentleman in the direction of his amazingly graphic personal reminiscences instead of giving him texts for the political and moral diatribes which were apt to be reproductions of his books. In various early writings he expressed his dissent very decidedly along with a very cordial admiration both of the graphic vigour of Carlyle's writings and of some of his general views of life. In an article in 'Fraser' for December 1865, he prefaces a review of 'Frederick' by a long discussion of Carlyle's principles. He professes himself to be one of the humble 'pig-philosophers' so vigorously denounced by the prophet. Carlyle is described as a 'transcendentalist'—a kind of qualified equivalent to intuitionist. And while he admires the shrewdness, picturesqueness, and bracing morality of Carlyle's teaching, Fitzjames dissents from his philosophy. Nay, the 'pig-philosophers' are the really useful workers; they have achieved the main reforms of the century; even their favourite parliamentary methods and their democratic doctrines deserve more respect than Carlyle has shown them; and Carlyle, if well advised, would recognise the true meaning of some of the 'pig' doctrines to be in harmony with his own. Their *laissez-faire* theory, for example, is really a version of his own favourite tenet, 'if a

man will not work, neither let him eat.' Although Fitzjames's views changed, he could never become a thorough Carlylean; and after undertaking to write about Carlyle in Mr. Morley's series he abandoned the attempt chiefly because, as he told me, he found that he should have to adopt too frequently the attitude of a hostile critic. Meanwhile Carlyle admired my brother's general force of character, and ultimately made him his executor, in order, as he put it, that there might be a 'great Molossian dog' to watch over his treasure.

VIII. VIEW OF THE CRIMINAL LAW

I come now to the third book of which I have spoken. This was the 'General View of the Criminal Law of England,' published in 1863. Fitzjames first begins to speak of his intention of writing this book in 1858. He then took it up in preference to the history of the English administrative system, recommended by his father. That book, indeed, would have required antiquarian researches for which he had neither time nor taste. He thought his beginning too long and too dull to be finished at present. He was anxious, moreover, at the time of the Education Commission to emphasise the fact that he had no thoughts of abandoning his profession. A law-book would answer this purpose; and the conclusion of the commission in 1861, and the contemporary breach with the 'Saturday Review,' gave him leisure enough to take up this task. The germ of the book was already contained in his article in the 'Cambridge Essays,' part of which he reproduces. He aspired to make a book which should be at once useful to lawyers and readable by every educated man. The 'View' itself has been in a later edition eclipsed by the later 'History of the English Criminal Law.' In point of

style it is perhaps better than its successor, because more concentrated to a single focus. Although I do not profess to be a competent critic of the law, a few words will explain the sense in which I take it to be characteristic of himself.

The book, in the first place, is not, like most law-books, intended for purely practical purposes. It attempts to give an account of the 'general scope, tendency, and design of an important part of our institutions of which surely none can have a greater moral significance, or be more closely connected with broad principles of morality and politics, than those by which men rightfully, deliberately, and in cold blood, kill, enslave, or otherwise torment their fellow-creatures.'[1] The phrase explains the deep moral interest belonging in his mind to a branch of legal practice which for sufficiently obvious reasons is generally regarded as not deserving the attention of the higher class of barristers. Fitzjames was always attracted by the dramatic interest of important criminal cases, and by the close connection in various ways between criminal law and morality. He had now gained sufficient experience to speak with some authority upon a topic which was to occupy him for many years. In his first principles he was an unhesitating disciple of Bentham[2] and Austin. Bentham had given the first great impulse to the reforms in the English Criminal Law, which began about 1827; and Austin had put Bentham's general doctrine into a rigid form which to Fitzjames appeared perfectly satisfactory. Austin's authority has declined as the historical method has developed; Fitzjames gives his impression of their true relations in an article on 'Jurisprudence' in the

[1] Preface.

[2] See 'Bentham' in *Horæ Sabbaticæ*, iii. 210–229, published originally about this time.

'Edinburgh Review' of October 1861. He there reviews the posthumously published lectures of Austin, along with Maine's great book upon 'Ancient Law,' which in England heralded the new methods of thought. His position is characteristic. He speaks enthusiastically of Austin's services in accurately defining the primary conceptions with which jurisprudence is conversant. The effect is, he says, nothing less than this; that jurisprudence has become capable of truly scientific treatment. He confirms his case by the parallel of the Political Economy founded by Adam Smith and made scientific by Ricardo. I do not think that Fitzjames was ever much interested in economical writings; and here he is taking for granted the claims which were generally admitted under the philosophical dynasty of J. S. Mill. Political Economy was supposed to be a definitely constituted science; and the theory of jurisprudence, which sprang from the same school and was indeed its other main achievement, was entitled to the same rank. Fitzjames argues, or rather takes for granted, that the claims of the economists to be strictly scientific are not invalidated by the failure of their assumptions to correspond exactly to concrete facts; and makes the same claim on behalf of Austin. His view of Maine's work is determined by this. He of course cordially admires his friend; but protests against the assumption by which Maine is infected, that a history of the succession of opinions can be equivalent to an examination of their value. Maine shows, for example, how the theory of the 'rights of man' first came up in the world; but does not thereby either prove or disprove it. It may have been a fallacy suggested by accident or a truth first discovered in a particular case. Maine, therefore, and the historical school generally require some basis for their inquiries, and that basis is

supplied by the teaching of Bentham and Austin. I will only observe in connection with this that Fitzjames is tempted by his love of such inquiries to devote a rather excessive space in his law-book to inquiries about the logical grounds of conviction which have the disadvantage of not being strictly relevant, and the further disadvantage, I think, of following J. S. Mill in some of the more questionable parts of his logic.

The writings of Bentham consisted largely in denunciations of the various failings of the English law; and here Fitzjames takes a different position. One main point of the book was the working out of a comparison already made in the 'Cambridge Essays' between the English and the French systems. This is summed up in the statement that the English accepts the 'litigious' and the French the 'inquisitorial' system. In other words, the theory of French law is that the whole process of detecting crime is part of the functions of government. In France there is a hierarchy of officials who, upon hearing of a crime, investigate the circumstances in every possible way, and examine everyone who is able, or supposed to be able, to throw any light upon it. The trial is merely the final stage of the investigation, at which the various authorities bring out the final result of all their previous proceedings. The theory of English law, on the contrary, is 'litigious': the trial is a proceeding in which the prosecutor endeavours to prove that the prisoner has rendered himself liable to a certain punishment; and does so by producing evidence before a judge, who is taken to be, and actually is, an impartial umpire. He has no previous knowledge of the fact; he has had nothing to do with any investigations, and his whole duty is to see that the game is played fairly between the ligitants according to certain established rules. Neither system, indeed, carries out the theory

exclusively. 'An English criminal trial is a public inquiry, having for its object the discovery of truth, but thrown for the purposes of obtaining that end into the form of a litigation between the prosecutor and the prisoner.'[1] On the other hand, in the French system, the jury is really an 'excrescence' introduced by an afterthought. Now, says Fitzjames, the 'inquisitorial theory' is 'beyond all question the true one.' A trial ought obviously to be a public inquiry into a matter of public interest. He holds, however, that the introduction of the continental machinery for the detection of crime is altogether out of the question. It practically regards the liberty and comfort of any number of innocent persons as unimportant in comparison with the detection of a crime; and involves an amount of interference and prying into all manner of collateral questions which would be altogether unendurable in England. He is therefore content to point out some of the disadvantages which result from our want of system, and to suggest remedies which do not involve any radical change of principle.

This brings out his divergence from Bentham, not in principle but in the application of his principles. One most characteristic part of the English system is the law of evidence, which afterwards occupied much of Fitzjames's thoughts. Upon the English system there are a great number of facts which, in a logical sense, have a bearing upon the case, but which are forbidden to be adduced in a trial. So, to make one obvious example, husbands and wives are not allowed to give evidence against each other. Why not? asks Bentham. Because, it is suggested, the evidence could not be impartial. That, he replies, is an excellent reason for not implicitly believing it; but it is no reason for not receiving it. The

[1] *View of Criminal Law*, p. 167.

testimony, even if it be partial, or even if false, may yet be of the highest importance when duly sifted with a view to the discovery of the truth. Why should we neglect any source from which light may be obtained? Such arguments fill a large part of Bentham's elaborate treatise upon the 'Rationale of Evidence,' and support his denunciations of the 'artificial' system of English law. English lawyers, he held, thought only of 'fee-gathering'; and their technical methods virtually reduced a trial from an impartial process of discovering truth into a mere struggle between lawyers fighting under a set of technical and arbitrary rules. He observes, for example, that the 'natural' mode of deciding a case has been preserved in a few cases by necessity, and especially in the case of Courts-Martial.[1] Bentham was not a practical lawyer; and Fitzjames had on more than one occasion been impressed in precisely the opposite way by the same case.[2] He had pointed out that the want of attention to the rules of evidence betrayed courts-martial into all manner of irrelevant and vexatious questions, which protracted their proceedings beyond all tolerable limits. But, on a larger scale, the same point was illustrated by a comparison between French and English trials. To establish this, he gives careful accounts of four English and three French trials for murder. The general result is that, although some evidence was excluded in the English trials which might have been useful, the advantage was, on the whole, greatly on their side. The French lawyers were gradually drawn on into an enormous quantity of investigations having very little relation to the case, and finally producing a mass of complicated statements and counter-statements beyond the capacity of a

[1] E.g. *Works*, vii. 321, &c.

[2] See articles on Courts-Martial in *Cornhill* for June 1862.

jury to bring to a definite issue. The English trials, on the other hand, did, in fact, bring matters to a focus, and allowed all really relevant matters to be fairly laid before the court. A criminal trial has to be more or less of a rough and ready bit of practical business. The test by which it is decided is not anything which can be laid down on abstract logical principles, but reduces itself to the simple fact that you can get twelve men to express a conviction equal to that which would decide them in important business of their own. And thus, though the English law is unsystematic, ill-arranged, and superficially wanting in scientific accuracy, it does, in fact, represent a body of principles, worked out by the rough common sense of successive generations, and requires only to be tabulated and arranged to become a system of the highest excellence.

The greatest merit, perhaps, of the English system is the attitude naturally assumed by the judge. No one, says Fitzjames, 'can fail to be touched' when he sees an eminent lawyer 'bending the whole force of his mind to understand the confused, bewildered, wearisome, and half-articulate mixture of question and statement which some wretched clown pours out in the agony of his terror and confusion.' The latitude allowed in such cases is highly honourable. 'Hardly anything short of wilful misbehaviour, such as gross insults to the court or abuse of a witness, will draw upon (the prisoner) the mildest reproof.'[1] The tacit understanding by which the counsel for the Crown is forbidden to press his case unfairly is another proof of the excellence of our system, which contrasts favourably in this respect with the badgering and the prolonged moral torture to which a French prisoner is subject. Reforms, however, are needed which will not

[1] *View of Criminal Law*, p. 232.

weaken these excellences. The absence of any plan for interrogating the prisoner avoids the abuses of the French system, but is often a cruel hardship upon the innocent. 'There is a scene,' he says, 'which most lawyers know by heart, but which I can never hear without pain.' It is the scene when the prisoner, confused by the unfamiliar surroundings, and by the legal rules which he does not understand, tries to question the adverse witness, and muddles up the examination with what ought to be his speech for the defence, and, not knowing how to examine, is at last reduced to utter perplexity, and thinks it respectful to be silent. He mentions a case by which he had been much impressed, in which certain men accused of poaching had failed, from want of education and familiarity with legal rules, to bring out their real defence. An unlucky man, for example, had asked questions about the colour of a dog, which seemed to have no bearing upon the case, but which, as it afterwards turned out, incidentally pointed to a fact which identified the really guilty parties. He thinks that the interrogation of the prisoner might be introduced under such restrictions as would prevent any unfair bullying, and yet tend both to help an innocent man and to put difficulties in the way of sham or false defences of the guilty. This question, I believe, is still unsettled. I will not dwell upon other suggestions. I will only observe that he is in favour of some codification of the criminal law; though he thinks that enough would be done by re-enacting, in a simpler and less technical form, the six 'Consolidation Acts' of 1861. He proposes, also, the formation of a Ministry of Justice which would in various ways direct the administration of the law, and superintend criminal legislation. Briefly, however, I am content to say that, while he starts from Bentham, and admits Bentham's fundamental prin-

ciples, he has become convinced by experience that Bentham's onslaught upon 'judge-made law,' and legal fictions, and the 'fee-gathering' system, was in great part due to misunderstanding. The law requires to be systematised and made clear rather than to be substantially altered. It is, on the whole, a 'generous, humane, and high-minded system, eminently favourable to individuals, and free from the taint of that fierce cowardice which demands that, for the protection of society, somebody shall be punished when a crime has been committed.' Though English lawyers are too apt to set off 'an unreasonable hardship against an unreasonable indulgence,' 'to trump one quibble by another, and to suppose that they cannot be wrong in practice because they are ostentatiously indifferent to theory,' the temper of the law is, in the main, 'noble and generous.' 'No spectacle,' he says, 'can be better fitted to satisfy the bulk of the population, to teach them to regard the Government as their friend, and to read them lessons of truth, gentleness, moderation, and respect for the rights of others, especially for the rights of the weak and the wicked, than the manner in which criminal justice is generally administered in this country.' [1]

The book produced many of those compliments to which he was becoming accustomed, with a rather rueful sense of their small value. He could, he says, set up a shop with the stock he had received, though, in common honesty, he would have to warn his customers of the small practical value of his goods. Two years hence, he thinks that a report of his being a legal author of some reputation may have reached an attorney. Among the warmest admirers was Willes, who called the 'View' a 'grand book,' kept it by him on the bench, and laid down the law out of it. Willes remarks in a murder case at the same time

[1] *View of Criminal Law*, p. 232.

(March 1865) that the prisoner has been defended 'with a force and ability which, if anything could console one for having to take part in such a case, would do so.' 'It is a great consolation to me,' remarks Fitzjames. The local newspaper observes on the same occasion that Fitzjames's speech for the prisoner kept his audience listening 'in rapt attention' to one of the ablest addresses ever delivered under such circumstances. In the beginning of 1865 he 'obtained the consent' of his old tutor Field, now leader on the circuit, to his giving up attendance at sessions except upon special retainers. Altogether he is feeling more independent and competent for his professional duties.

IX. THE 'PALL MALL GAZETTE'

At this time, however, he joined in another undertaking which for the following five years occupied much of his thoughts. It involved labours so regular and absorbing, that they would have been impossible had his professional employments been equal to his wishes. Towards the end of 1864 he informs Mr. Smith that he cannot continue to be a regular contributor to the 'Cornhill Magazine.' He observes, however, that if Mr. Smith carries out certain plans then in contemplation, he will be happy to take the opportunity of writing upon matters of a more serious kind. The reference is to the 'Pall Mall Gazette,' of which the first number appeared on February 7, 1865, upon the opening day of the parliamentary session. The 'Pall Mall Gazette' very soon took a place among daily papers similar to that which had been occupied by the 'Saturday Review' in the weekly press. Many able writers were attached, and especially the great 'Jacob Omnium' (Matthew James Higgins), who had a superlative turn for 'occasional notes,' and 'W. R. G.' (William Rathbone

Greg), who was fond of arguing points from a rather paradoxical point of view. 'I like refuting W. R. G.,' says Fitzjames, though the 'refutations' were on both sides courteous and even friendly.[1] Mr. Frederic Harrison was another antagonist, who always fought in a chivalrous spirit, and on one occasion a controversy between them upon the theory of strikes actually ends by a mutual acceptance of each other's conclusions. A sharp encounter with 'Historicus' of the 'Times' shows that old Cambridge encounters had not produced agreement. Fitzjames was one of the writers to whom Mr. Smith applied at an early stage of the preparatory arrangements. Fitzjames's previous experience of Mr. Smith's qualities as a publisher made him a very willing recruit, and he did his best to enlist others in the same service. He began to write in the second number of the paper, and before very long he took the lion's share of the leading articles. The amount of work, indeed, which he turned out in this capacity, simultaneously with professional work and with some other literary occupations, was so great that these years must, I take it, have been the most laborious in a life of unflagging labour. I give below an account of the number of articles contributed, which will tell the story more forcibly than any general statement. A word or two of explanation will be enough.[2] The 'Pall Mall' of those days consisted of a

[1] One of his smartest phrases was occasioned by Mr. Greg declaring himself to be a Christian. He was such a Christian, said Fitzjames, as an early disciple who had admired the Sermon on the Mount, but whose attention had not been called to the miracles, and who had died before the resurrection.

[2] Contributions of James Fitzjames Stephen to the *Pall Mall Gazette* (kindly sent to me by Mr. George Smith) :—

Dates	Articles	Occasional notes	Correspondence
1865	143	103	8
1866	147	36	22
1867	194	27	9
1868	226	29	11

leading article (rarely of two) often running to a much greater length than is now common; of 'occasional notes,' which were then a comparative novelty; of reviews, and of a few miscellaneous articles. The leading article was a rather more important part of the paper, or at least took up a larger proportion of space than it does at the present day. Making allowance for Sundays, it will be seen that in 1868 Fitzjames wrote two-thirds of the leaders, nearly half the leaders in 1867, and not much less than half in the three other years (1865, 1866, and 1869). The editor was Mr. F. Greenwood, who has kindly given me some of his recollections of the time. That Mr. Greenwood esteemed his contributor as a writer is sufficiently obvious from the simple statement of figures: and I may add that they soon formed a very warm friendship which was never interrupted in later years.

I have said that Fitzjames valued his connection with the paper because it enabled him to speak his mind upon many important subjects which had hitherto been forbidden to him. In the 'Saturday Review' he had been confined to the 'middles' and the reviews of books. He never touched political questions; and such utterances as occurred upon ecclesiastical matters were limited by the high church propensities of the proprietor. In the 'Cornhill' he had been bound to keep within the limits prescribed by the tastes of average readers of light literature. In the 'Pall Mall Gazette' he was able to speak out with perfect freedom upon all the graver topics of the day.

Dates	Articles	Occasional notes	Correspondence
1869	142	5	—
1870	14	—	—
1872	112	3	2
1873	96	1	7
1874	39	2	8
1875	6	—	5
1878	1	—	—

His general plan, when in town, was to write before breakfast, and then to look in at the office of the 'Pall Mall Gazette,' Northumberland Street, Strand, in the course of his walk to his chambers. There he talked matters over with Mr. Greenwood, and occasionally wrote an article on the spot. When on circuit he still found time to write, and kept up a steady supply of matter. I find him remarking, on one occasion, that he had written five or six leaders in the 'Pall Mall Gazette' for the week, besides two 'Saturday Review' articles. Everyone who has had experience of journalism knows that the time spent in actual writing is a very inadequate measure of the mental wear and tear due to production. An article may be turned out in an hour or two; but the work takes off the cream of the day, and involves much incidental thought and worry. Fitzjames seemed perfectly insensible to the labour; articles came from him as easily as ordinary talk; the fountain seemed to be always full, and had only to be turned on to the desired end. The chief fault which I should be disposed to find with these articles is doubtless a consequence of this fluency. He has not taken time to make them short. They often resemble the summing-up of a judge, who goes through the evidence on both sides in the order in which it has been presented to him, and then states the 'observations which arise' and the 'general result' (to use his favourite phrases). A more effective mode of presenting the case might be reached by at once giving the vital point and arranging the facts in a new order of subordination.

The articles, however, had another merit which I take to be exceedingly rare. I have often wondered over the problem, What constitutes the identity of a newspaper? I do not mean to ask, though it might be asked, In what sense is the 'Pall Mall Gazette' of to-day the same news-

paper as the 'Pall Mall Gazette' of 1865? but What is meant by the editorial 'We'? The inexperienced person is inclined to explain it as a mere grammatical phrase which covers in turn a whole series of contributors. But any writer in a paper, however free a course may be conceded to him, finds as a fact that the 'we' means something very real and potent. As soon as he puts on the mantle, he finds that an indefinable change has come over his whole method of thinking and expressing himself. He is no longer an individual but the mouthpiece of an oracle. He catches some infection of style, and feels that although he may believe what he says, it is not the independent outcome of his own private idiosyncrasy. Now Fitzjames's articles are specially remarkable for their immunity from this characteristic. When I read them at the time, and I have had the same experience in looking over them again, I recognised his words just as plainly as if I had heard his voice. A signature would to me and to all in the secret have been a superfluity. And, although the general public had not the same means of knowledge, it was equally able to perceive that a large part of the 'Pall Mall Gazette' represented the individual convictions of a definite human being, who had, moreover, very strong convictions, and who wrote with the single aim of expressing them as clearly and vigorously as he could. Fitzjames, as I have shown sufficiently, was not of the malleable variety; he did not fit easily into moulds provided by others; but now that his masterful intellect had full play and was allowed to pour out his genuine thought, it gave the impress of individual character to the paper in a degree altogether unusual.

I have one anecdote from Mr. Greenwood which will sufficiently illustrate this statement. Lord Palmerston died on October 18, 1865. On October 27 he was buried in Westminster Abbey. Fitzjames came to the 'Pall Mall

Gazette' office and proposed to write an article upon the occasion. He went for the purpose into a room divided by a thin partition from that in which Mr. Greenwood sat. Mr. Greenwood unintentionally became aware, in consequence, that the article was composed literally with prayer and with tears. No one who turns to it will be surprised at the statement. He begins by saying that we are paying honour to a man for a patriotic high spirit which enabled him to take a conspicuous part in building up the great fabric of the British Empire. But he was also —as all who were taking part in the ceremony believed in their hearts—a 'man of the world' and 'a man of pleasure.' Do we, then, disbelieve in our own creed, or are we engaged in a solemn mockery? Palmerston had not obeyed the conditions under which alone, as every preacher will tell us, heaven can be hoped for. Patriotism, good nature, and so forth are, as we are told, mere 'filthy rags' of no avail in the sight of heaven. If this belief be genuine, the service must be a mockery. But he fully believes that it is not genuine. The preachers are inconsistent, but it is an honourable inconsistency. If good and evil be not empty labels of insincere flattery, it is 'right, meet, and our bounden duty' to do what is being done even now—to kneel beside the 'great, good, and simple man whom we all deplore,' and to thank God that it has pleased Him to remove our brother 'out of the miseries of this sinful world.'

'Our miserable technical rules reach but a little way into the mystery' which 'dimly foreshadows that whatever we with our small capacities have been able to love and honour, God, who is infinitely wiser, juster, and more powerful, will love and honour too, and that whatever we have been compelled to blame, God, who is too pure to endure unrighteousness, will deal with, not revengefully or capriciously, but justly and with a righteous purpose.

Whatever else we believe, it is the cardinal doctrine of all belief worth having that the Judge of all the earth will do right; that His justice is confined to no rules; that His mercy is over all the earth; and that revenge, caprice, and cruelty can have no place in His punishments.'

Few leading articles, I take it, have been written under such conditions or in such a spirit. The reader must have felt himself face to face with a real man, profoundly moved by genuine thoughts and troubled as only the most able and honest men are troubled, by the contrast between our accustomed commonplaces and our real beliefs. Most of his articles are written in a strain of solid and generally calm common sense; and some, no doubt, must have been of the kind compared by his father to singing without inflated lungs—mere pieces of routine taskwork. Yet, as I have already shown, by his allegory of the ship, there was always a strong vein of intense feeling upon certain subjects, restrained as a rule by his dislike to unveiling his heart too freely and yet making itself perceptible in some forcible phrase and in the general temper of mind implied. The great mass of such work is necessarily of ephemeral interest; and it is painful to turn over the old pages and observe what a mould of antiquity seems to have spread over controversies so exciting only thirty years ago. We have gone far in the interval; *though it is well to remember that we too shall soon be* out of date, and our most modern doctrines lose the bloom of novelty. There are, however, certain lights in which even the most venerable discussions preserve all their freshness. Without attempting any minute details, I will endeavour to indicate the points characteristic of my brother's development.

There was one doctrine which he expounds in many connections, and which had a very deep root in his

character. It appears, for example, in his choice of a profession; decided mainly by the comparison between the secular and the spiritual man. The problem suggested to him by Lord Palmerston shows another application of the same mode of thought. What is the true relation between the Church and the world; or between the monastic and ascetic view of life represented by Newman and the view of the lawyer or man of business? To him, as I have said, God seemed to be more palpably present in a court of justice than in a monastery; and this was not a mere epigram expressive of a transitory mood. Various occurrences of the day led him to apply his views to questions connected with the Established Church. After the 'Essays and Reviews' had ceased to be exciting there were some eager discussions about Colenso, and his relations as Bishop of Natal to the Bishop of Capetown. Controversies between liberal Catholics and Ultramontanes raised the same question under different aspects, and Fitzjames frequently finds texts upon which to preach his favourite sermon. It may be said, I think, that there are three main lines of opinion. In the first place, there was the view of the liberationists and their like. The ideal is a free Church in a free State. Each has its own sphere, and, as Macaulay puts it in his famous essay upon Mr. Gladstone's early book, the State has no more to do with the religious opinions of its subjects than the North-Western Railway with the religious opinions of its shareholders. This, represented a view to which Fitzjames felt the strongest antipathy. It assumed, he thought, a radically false notion, the possibility of dividing human life into two parts, religious and secular; whereas in point of fact the State is as closely interested as the Church in the morality of its members, and therefore in the religion which determines the morality. The State can

only keep apart permanently from religious questions by resigning all share in the most profoundly important and interesting problems of life. To accept this principle would therefore be to degrade the State to a mere commercial concern, and it was just for that reason that its acceptance was natural to the ordinary radical who reflected the prejudices of the petty trader. A State which deserves the name has to adopt morality of one kind or another, in its criminal legislation, in its whole national policy, in its relation to education, and more or less in every great department of life. In his view, therefore, the ordinary cry for disestablishment was not the recognition of a tenable and consistent principle, but an attempt to arrange a temporary compromise which could only work under special conditions, and must break up whenever men's minds were really stirred. However reluctant they may be, they will have to answer the question, Is this religion true or not? and to regulate their affairs accordingly. He often expresses a conviction that we are all in fact on the eve of such a controversy, which must stir the whole of society to its base.

We have, then, to choose between two other views. The doctrine of sovereignty expounded by Austin, and derived from his favourite philosopher Hobbes, enabled him to put the point in his own dialect. The difference between Church and State, he said, is not a difference of spheres, but a difference of sanctions. Their commands have the same subject matter: but the priest says, 'Do this or be damned'; the lawyer, 'Do this or be hanged.' Hence the complete separation is a mere dream. Since both bodies deal with the same facts, there must be an ultimate authority. The only question is which? Will you obey the Pope or the Emperor, the power which claims the keys of another life or the power which wields

the sword in this. So far he agrees with the Ultramontanes as against the liberal Catholics. But, though the Ultramontanes put the issue rightly, his answer is diametrically opposite. He follows Hobbes and is a thoroughgoing Erastian. He sympathised to some degree with the doctrine of Coleridge and Dr. Arnold. They regarded the Church and the State as in a sense identical; as the same body viewed under different aspects. Fitzjames held also that State and Church should be identical; but rather in the form that State and Church were to be one and that one the State. For this there were two good reasons. In the first place, the claims of the Church to supernatural authority were altogether baseless. To bow to those claims was to become slaves of priests and to accept superstitions. And, in the next place, this is no mere accident. The division between the priest and layman corresponds to his division between his 'sentimentalist' and his 'stern, cold man of common sense.' Now the priest may very well supply the enthusiasm, but the task of legislation is one which demands the cool, solid judgment of the layman. He insists upon this, for example, in noticing Professor Seeley's description of the 'Enthusiasm of Humanity' in 'Ecce Homo.' Such a spirit, he urges, may supply the motive power, but the essence of the legislative power is to restrict and constrain, and that is the work not of the enthusiast, but of the man of business. During this period he seems to have had some hopes that his principles might be applied. The lawyers had prevented the clergy from expelling each section of the Church in turn: and the decision in the 'Essays and Reviews' cases had settled that free-thinking should have its representatives among ecclesiastical authorities. At one period he even suggests that, if an article or two were added to the thirty-nine, some change

made in the ordination service, and a relaxation granted in the terms of subscription, the Church might be protected from sacerdotalism ; and, though some of the clergy might secede to Rome, the Church of England might be preserved as virtually the religious department of the State. He soon saw that any realisation of such views was hopeless. He writes from India in 1870 to a friend, whom he had advised upon a prosecution for heresy, saying that he saw clearly that we were drifting towards voluntaryism. Any other solution was for the present out of the question ; although he continued to regard this as a makeshift compound, and never ceased to object to disestablishment.

Fitzjames's political views show the same tendencies. He had not hitherto taken any active interest in politics, taken in the narrower sense. Our friend Henry Fawcett, with whom he had many talks on his Christmas visits to Trinity Hall, was rather scandalised by my brother's attitude of detachment in regard to the party questions of the day. Fitzjames stood for Harwich in the Liberal interest at the general election of 1865 ; but much more because he thought that a seat in Parliament would be useful in his profession than from any keen interest in politics. The Harwich electors in those days did not, I think, take much interest themselves in political principles. Both they and he, however, seemed dimly to perceive that he was rather out of his element, and the whole affair, which ended in failure, was of the comic order. His indifference and want of familiarity with the small talk of politics probably diminished the effect of his articles in so far as it implied a tendency to fall back upon principles too general for the average reader. But there was no want of decided convictions. The death of Palmerston marked the end of the old era, and was soon succeeded by

the discussions over parliamentary reform which led to Disraeli's measure of 1867. Fitzjames considered himself to be a Liberal, but the Liberals of those days were divided into various sections, not fully conscious of the differences which divided them. In one of his 'Cornhill' articles[1] Fitzjames had attempted to define what he meant by liberalism. It meant, he said, hostility to antiquated and narrow-minded institutions. It ought also to mean 'generous and high-minded sentiments upon political subjects guided by a highly instructed, large-minded and impartial intellect, briefly the opposite of sordidness, vulgarity, and bigotry.' The party technically called Liberal were about to admit a larger popular element to a share of political power. The result would be good or bad as the new rulers acted or did not act in the spirit properly called Liberal. Unluckily the flattery of the working-man has come into fashion; we ignore his necessary limitations, and we deify the 'casual opinions and ineffectual public sentiments' of the half-educated. 'The great characteristic danger of our days is the growth of a quiet, ignoble littleness of character and spirit.' We should aim, therefore, at impressing our new masters 'with a lofty notion not merely of the splendour of the history of their country, but of the part which it has to play in the world, and of the spirit in which it should be played.' He gives as an example a topic to which he constantly turns. The 'whole fabric' of the Indian Empire, he says, is a monument of energy, 'skill and courage, and, on the whole, of justice and energy, such as the world never saw before.' How are we to deal with that great inheritance bequeathed to us by the courage of heroes and the wisdom of statesmen? India is but one instance. There is hardly an institution in the country which may not be renewed

[1] 'Liberalism,' January 1862.

if we catch the spirit which presided over its formation. Liberals have now to be authors instead of critics, and their solution of such problems will decide whether their success is to be a curse or a blessing.

This gives the keynote of his writings in the 'Pall Mall Gazette.' He frankly recognises the necessity, and therefore does not discuss the advisability, of a large extension of the franchise. He protests only against the view, which he attributes to Bright, that the new voters are to enter as victors storming the fortress of old oppressors, holding that they should be rather cordially invited to take their place in a stately mansion upheld for eight centuries by their ancestors. When people are once admitted, however, the pretext for admission is of little importance. Fitzjames gradually comes to have his doubts. There is, he says, a liberalism of the intellect and a liberalism of sentiment. The intellectual liberal is called a 'cold-hearted doctrinaire' because he asks only whether a theory be true or false; and because he wishes for statesmanlike reforms of the Church, the educational system, and the law, even though the ten-pound householder may be indifferent to them. But the sentimental liberal thought only of such measures as would come home to the ten-pound householder; and apparently this kind of liberal was getting the best of it. The various party manœuvres which culminated in the Reform Bill begin to excite his contempt. He is vexed by the many weaknesses of party government. The war of 1866 suggests reflections upon the military weakness of England, and upon the inability of our statesmen to attend to any object which has no effect upon votes. The behaviour of the Conservative Government in the case of the Hyde Park riots of the same year excites his hearty contempt. He is in favour of the disestablishment of the Irish Church, and

lays down substantially the principles embodied in Mr. Gladstone's measure. But he sympathises more and more with Carlyle's view of our blessed constitution. We have the weakest and least permanent government that ever ruled a great empire, and it seems to be totally incapable of ever undertaking any of the great measures which require foresight and statesmanship. He compares in this connection the construction of legal codes in India with our inability to make use of a great legal reformer, such as Lord Westbury, when we happen to get him. Sentiments of this kind seem to grow upon him, although they are not expressed with bitterness or many personal applications. It is enough to say that his antipathy to sentimentalism, and to the want of high patriotic spirit in the Manchester school of politics, blends with a rather contemptuous attitude towards the parliamentary system. It reveals itself to him, now that he is forced to become a critic, as a petty game of wire-pulling and of pandering to shallow popular prejudices of which he is beginning to grow impatient.

I may finish the account of his literary activity at this time by saying that he was still contributing occasional articles to 'Fraser' and to the 'Saturday Review.' The 'Saturday Review' articles were part of a scheme which he took up about 1864. It occurred to him that he would be employing himself more profitably by writing a series of articles upon old authors than by continuing to review the literature of the day. He might thus put together a kind of general course of literature. He wrote accordingly a series of articles which involved a great amount of reading as he went through the works of some voluminous authors. They were published as 'Horæ Sabbaticæ' in 1892, in three volumes, without any serious revision. It is unnecessary to dwell upon them at any

length. It would be unfair to treat them as literary criticism, for which he cared as little as it deserves. He was very fond, indeed, of Sainte-Beuve, but almost as much for the information as for the criticism contained in the 'Causeries.' He had always a fancy for such books as Gibbon's great work which give a wide panoramic view of history, and defended his taste on principle. These articles deal with some historical books which interested him, but are chiefly concerned with French and English writers from Hooker to Paley and from Pascal to De Maistre, who dealt with his favourite philosophical problems. Their peculiarity is that the writer has read his authors pretty much as if he were reading an argument in a contemporary magazine. He gives his view of the intrinsic merits of the logic with little allowance for the historical position of the author. He has not made any study of the general history of philosophy, and has not troubled himself to compare his impressions with those of other critics. The consequence is that there are some very palpable misconceptions and failure to appreciate the true relation to contemporary literature of the books criticised. I can only say, therefore, that they will be interesting to readers who like to see the impression made upon a masculine though not specially prepared mind by the perusal of certain famous books, and who relish an independent verdict expressed in downright terms without care for the conventional opinion of professional critics.

His thoughts naturally turned a good deal to various projects connected with his writing. In July 1867 he writes that he has resolved to concentrate himself chiefly upon the 'Pall Mall Gazette' for the present. He is, however, to complete some schemes already begun. The 'Fraser' articles upon religious topics will make one book; then there are the 'Horæ Sabbaticæ' articles, of which

he has already written fifty-eight, and which will be finished in about twenty more. But, besides this, he has five law-books in his mind, including a rewriting of the book on criminal law and a completion of the old book upon the administrative history. Others are to deal with martial law, insanity, and the relations of England to India and the colonies. Beyond these he looks at an 'awful distance' upon a great book upon law and morals. He is beginning to doubt whether literature would not be more congenial than law, if he could obtain some kind of permanent independent position. Law, no doubt, has given him a good training, but the pettiness of most of the business can hardly be exaggerated; and he hardly feels inclined to make it the great aim of his life. He had, however, risen to a distinctly higher position on his circuit; and just at this time he was engaged in one of the cases which, as usual, brought more in the way of glory than of gain.

X. GOVERNOR EYRE

The troubles in Jamaica had taken place in October 1865. The severity of the repressive measures excited indignation in England; and discussions arose conducted with a bitterness not often paralleled. The Gordon case was the chief topic of controversy. Governor Eyre had arrested Gordon, whom he considered to be the mainspring of the insurrection, and sent him to the district in which martial law had been proclaimed. There he was tried by a court-martial ordered by General Nelson, and speedily hanged. The controversy which followed is a curious illustration of the modes of reasoning of philosophers and statesmen. Nobody could deny the general proposition that the authorities are bound to take energetic measures

to prevent the horrors of a servile insurrection. Nor could anyone deny that they are equally bound to avoid the needless severities which the fear of such horrors is likely to produce. Which principle should apply was a question of fact; but in practice the facts were taken for granted. One party assumed unanimously that Governor Eyre had been doing no more than his duty; and the other, with equal confidence, assumed that he was guilty of extreme severity. A commission, consisting of Sir Henry Storks, Mr. Russell Gurney, and Mr. Maule, the recorder of Leeds, was sent out at the end of 1865 to inquire into the facts. Meanwhile the Jamaica Committee was formed, of which J. S. Mill was chairman, with Mr. P. A. Taylor, the Radical leader, as vice-chairman.[1] The committee (in January 1866) took the opinions of Fitzjames and Mr. Edward James as to the proper mode of invoking the law. Fitzjames drew the opinion, which was signed by Mr. James and himself.[2] After the report of the Commission (April 1866), which showed that excesses had been committed, the committee acted upon this opinion.

From Fitzjames's letters written at the time, I find that his study of the papers published by the Commission convinced him that Governor Eyre had gone beyond the proper limits in his behaviour towards Gordon. The governor, he thought, had been guilty of an 'outrageous stretch of power,' and had hanged Gordon, not because it was necessary to keep the peace, but because it seemed to be expedient on general political grounds. This was what the law called murder, whatever the propriety of the

[1] Mr. Charles Buxton was the first chairman, but resigned because he thought a prosecution of Governor Eyre inexpedient, though not unjust. See J. S. Mill's *Autobiography*, pp. 296–299.

[2] It is substantially given in his *History of the Criminal Law* (1883), i. 207–216.

name. Fitzjames made an application in January 1867 before Sir Thomas Henry, the magistrate at Bow Street, to commit for trial the officers responsible for the court-martial proceedings (General Nelson and Lieutenant Brand) on the charge of murder. In March he appeared before the justices at Market Drayton, in Shropshire, to make a similar application in the case of Governor Eyre. He was opposed by Mr. (the late Lord) Hannen at Bow Street, and by Mr. Giffard (now Lord Halsbury) at Market Drayton. The country magistrates dismissed the case at once; but Sir Thomas Henry committed Nelson and Brand for trial. Mr. Lushington tells me that Sir Thomas Henry often spoke to him with great admiration of Fitzjames's powerful argument on the occasion. On April 10, 1867, the trial of Nelson and Brand came on at the Old Bailey, when Chief Justice Cockburn delivered an elaborate charge, taking substantially the view of the law already expounded by Fitzjames. The grand jury, however, threw out the bill.

The law, as understood by Fitzjames, comes, I think, substantially to this. The so-called 'martial law' is simply an application of the power given by the common law to put down actual insurrection by force. The officers who employ force are responsible for any excessive cruelty, and are not justified in using it after resistance is suppressed, or the ordinary courts reopened. The so-called courts-martial are not properly courts at all, but simply committees for carrying out the measures adopted on the responsibility of the officials; and the proclamation is merely a public notice that such measures will be employed.

It is clear from Fitzjames's speeches that he felt much sympathy for the persons who had been placed in a position of singular difficulty, and found it hard to draw the line

between energetic defence of order and over-severity to the rebels. He explains very carefully that he is not concerned with the moral question, and contends only that the legal name for their conduct is murder. In fact, he paid compliments to the accused which would be very inappropriate to the class of murderers in the ordinary sense of the term. The counsel on the opposite side naturally took advantage of this, and described his remarks as a 'ghastly show of compliment.' It must be awkward to say that a man is legally a murderer when you evidently mean only he has lost his head and gone too far under exceedingly trying circumstances. The Jamaica Committee did not admit of any such distinction. To them Governor Eyre appeared to be morally as well as legally guilty of murder. Fitzjames appears to have felt that the attempt to proceed further would look like a vindictive persecution; and he ceased after this to take part in the case. He congratulated himself upon this withdrawal when further proceedings (in 1868) led to abortive results.

One result was a coolness between my brother and J. S. Mill, who was displeased by his want of sufficient zeal in the matter. They had been on friendly terms, and I remember once visiting Mill at Blackheath in my brother's company. There was never, I think, any cordial relation between them. Fitzjames was a disciple of Mill in philosophical matters, and in some ways even, as I hold, pushed Mill's views to excess. He complains more than once at this time that Carlyle was unjust to the Utilitarian views, which, in his opinion, represented the true line of advance. But Carlyle was far more agreeable to him personally. The reason was, I take it, that Carlyle had what Mill had not, an unusual allowance of the quality described as 'human nature.' Mill undoubtedly was a

man of even feminine tenderness in his way; but in political and moral matters he represented the tendency to be content with the abstractions of the unpractical man. He seemed to Fitzjames at least to dwell in a region where the great passions and forces which really stir mankind are neglected or treated as mere accidental disturbances of the right theory. Mill seemed to him not so much cold-blooded as bloodless, wanting in the fire and force of the full-grown male animal, and comparable to a superlatively crammed senior wrangler, whose body has been stunted by his brains. Fitzjames could only make a real friend of a man in whom he could recognise the capacity for masculine emotions as well as logical acuteness, and rightly or wrongly Mill appeared to him to be too much of a calculating machine and too little of a human being. This will appear more clearly hereafter.

XI. INDIAN APPOINTMENT

In the meantime Fitzjames was obtaining, as usual, some occasional spurts of practice at the bar, while the steady gale still refused to blow. He had an influx of parliamentary business, which, for whatever reason, did not last long. He had some arbitration cases of some importance, and he was employed in a patent case in which he took considerable interest. He found himself better able than he had expected to take in mechanical principles, and thought that he was at last getting something out of his Cambridge education. Mr. Chamberlain has kindly sent me his recollections of this case. 'I first made the acquaintance of Sir J. F. Stephen' (he writes) 'in connection with a very important and complicated arbitration in which the firm of Nettlefold & Chamberlain, of which I was then a

partner, was engaged. Sir James led for us in this case, which lasted nearly twelve months, and he had as junior the late Lord Bowen. The arbitrator was the present Baron Pollock, assisted by Mr. Hick, M.P., the head of a great engineering firm. From the first I was struck with Sir James Stephen's extraordinary grasp of a most complicated subject, involving as it did the validity of a patent and comparison of most intricate machinery, as well as investigation of most elaborate accounts. He insisted on making himself personally acquainted with all the processes of manufacture, and his final speech on the case was a most masterly summary of all the facts and arguments. In dealing with hostile witnesses he was always firm but courteous, never taking unfair advantage or attempting to confuse, but solely anxious to arrive at the truth. He was a tremendous worker, rising very early in the morning, and occupying every spare moment of his time. I remember frequently seeing him in moments of leisure at work on the proofs of the articles which he was then writing for the "Pall Mall Gazette." In private he was a most charming companion, full of the most varied information and with a keen sense of humour. Our business relations led to a private friendship, which lasted until his death.' In 1868 he took silk, for which he had applied unsuccessfully two years before. In the autumn of the same year he sat for the first time in the place of one of the judges at Leeds, and had the pleasure of being 'my Lord,' and trying criminals. 'It appears to me,' he says, 'to be the very easiest work that ever I did.' The general election at the end of 1868 brought him some work in the course of the following year. He was counsel in several election petitions, and found the work contemptible. 'It would be wearisome,' he says, 'to pass one's life in a round of such things, even if one were paid

100*l.* a day.' Advocacy in general is hardly a satisfactory calling for a being with an immortal soul, and perhaps a mortal soul would have still less excuse for wasting its time. The view of the ugly side of politics is disgusting, and he acknowledges a 'restless ambition' prompting him to look to some more permanent results.

These reflections were partly suggested by a new turn of affairs. I have incidentally quoted more than one phrase showing how powerfully his imagination had been impressed by the Indian Empire. He says in his last book[1] that in his boyhood Macaulay's 'Essays' had been his favourite book. He had admired their manly sense, their 'freedom from every sort of mysticism,' their 'sympathy with all that is good and honourable.' He came to know him almost by heart, and in particular the essays upon Clive and Warren Hastings gave him a feeling about India like that which other boys have derived about the sea from Marryat's novels. The impression, he says, was made 'over forty years ago,' that is, by 1843. In fact the Indian Empire becomes his staple illustration whenever he is moved to an expression of the strong patriotic sentiment, which is very rarely far from his mind. He speaks in 1865 of recurring to an 'old plan' for writing a book about India. I remember that he suggested to me about that date that I should take up such a scheme, and was a good deal amused by my indignation at the proposal. James Mill, he argued, had been equally without the local knowledge which I declared to be necessary to a self-respecting author. Several circumstances had strengthened the feeling. His friend Maine had gone to India in 1862 as legal Member of Council, and was engaged upon that work of codification

[1] *Nuncomar and Impey*, ii. 271.

to which he refers admiringly in the 'View of the Criminal Law.' In November 1866 Fitzjames's brother-in-law, Henry Cunningham, went to India, where he was appointed public prosecutor in the Punjab. His sister, then Miss Emily Cunningham, joined him there. Their transplantation caused a very important part of Fitzjames's moorings (if I may say so) to be fixed in India. It became probable that he might be appointed Maine's successor. In 1868 this was suggested to him by Maine himself, when he regarded it on the whole unfavourably; but during 1869 the question came to need an answer. Against accepting the post was the risk to his professional prospects. Although not so brilliant as could be wished, they presented several favourable appearances; and he often hoped that he was at last emerging definitely from his precarious position. His opinion varied a little with the good or bad fortune of successive circuits. He felt that he might be sacrificing the interests of his family to his own ambition. The domestic difficulty was considerable. He had at this time seven children; and the necessity of breaking up the family would be especially hard upon his wife. Upon the other hand was the desire for a more satisfying sphere of action. 'I have been having a very melancholy time this circuit' (he writes to Miss Cunningham, March 17, 1869). 'I am thoroughly and grievously out of spirits about these plans of ours. On the whole I incline towards them; but they not unfrequently seem to me cruel to Mary, cruel to the children, undutiful to my mother, Quixotic and rash and impatient as regards myself and my own prospects. . . . I have not had a really cheerful and easy day for weeks past, and I have got to feel at last almost beaten by it.' He goes on to tell how he has been chaffed with the characteristic freedom of

barristers for his consequent silence at mess. It is 'thoroughly weak-minded of me,' he adds, but he will find a 'pretty straight road through it in one direction or another.' Gradually the attractions of India became stronger. 'It would be foolish,' he says, 'when things are looking well on circuit, to leave a really flourishing business to gratify a taste, though I must own that my own views and Henry Cunningham's letters give me almost a missionary feeling about the country.' He reads books upon the subject and his impression deepens. India, he declares, seems to him to be 'legally, morally, politically, and religiously nearly the most curious thing in the world.' At last, on May 11, while he is attending a 'thoroughly repulsive and disgusting' trial of an election petition at Stafford, he becomes sick of his indecision. He resolves to take a two hours' walk and make up his mind before returning. He comes back from his walk clear that it is 'the part of a wise and brave man' to accept such a chance when it comes in his way. Next day he writes to Grant Duff, then Indian Under-Secretary, stating his willingness to accept the appointment if offered to him. He was accordingly appointed on July 2. A fortnight later the Chief Justiceship of Calcutta, vacant by the resignation of Sir Barnes Peacock, was offered to him; but he preferred to retain his previous appointment, which gave him precisely the kind of work in which he was most interested.

He was pleased to recollect that the post on its first creation had been offered to his father. Among his earliest memories were those of the talks about India which took place at Kensington Gore on that occasion, when Macaulay strongly advised my father to take the post of which he soon became himself the first occupant. Fitzjames spent the summer at a house called Drumquinna

on the Kenmare river. Froude was his neighbour at Dereen on the opposite bank, and they saw much of each other. In November, after various leave-takings and the reception of a farewell address on resigning the recordership of Newark, he set out for India, his wife remaining for the present in England.

CHAPTER IV

INDIA

I. PERSONAL HISTORY

FITZJAMES reached Calcutta upon December 12, 1869. Henry Cunningham had made the long journey from Lahore to pay him a few days' visit. The whole time was devoted to an outpour of talk productive of boundless satisfaction to one—I suppose that I may say to both—of them. Fitzjames stayed in India until the middle of April 1872, and his absence from England, including the homeward and outward journeys, lasted for two years and a half. They were in some ways the most important years of his life; but they were monotonous enough in external incidents. I may briefly say that his wife joined him at Calcutta in the beginning of March 1870, and accompanied him to Simla. They diverged to pay a visit on the way to the Cunninghams at Lahore. They stayed at Simla till the end of October, where, for five or six weeks in May and June, Fitzjames was laid up with a sharp attack of fever. This was his only illness in India, and the only interruption to work of more than a day or two's duration. On his return to Calcutta he visited Delhi, whence his wife returned to England for the winter. In April 1871 he went again to Simla, and on the way thither was rejoined at Allahabad by his wife. In the following November she returned to England, while he

remained to spend the winter of 1871–2 in Calcutta and finish his official work.

He started in the best of health and in a sanguine frame of mind. He wrote his first letter to his mother from Boulogne (Nov. 9, 1869). 'I cannot tell you,' he says, 'how perfectly happy I feel in all my prospects. I never was more sure in my life of being right. . . . A whole ocean of small cares and worries has taken flight, and I can let my mind loose on matters I really care about.' He writes a (fourth) letter to his mother between Paris and Marseilles in the same spirit. 'I don't know whether you understand it,' he says, 'but if I had said "No" to India, I should feel as if I had been a coward and had lost the right to respect myself or to profess the doctrines I have always held and preached about the duty of doing the highest thing one can and of not making an idol of domestic comfort.' He continued to write to his mother regularly, dictating letters when disabled from writing by his fever, and the whole series, carefully numbered by her from 1 to 129, now lies before me. He wrote with almost equal regularity to other members of his family, of which he considered my sister-in-law, then Miss Thackeray,[1] to be an adopted member; and occasionally to other friends, such as Carlyle, Froude, and Venables. But to his mother he always devoted the first part of the time at his disposal. The pressure of work limits a few of these letters to mere assertions of his continued health and happiness; but he is always anxious to tell her any little anecdotes likely to interest her. I will give one of these,

[1] His first letter to Miss Thackeray, I notice, is written upon the back of a quaint broadsheet, bought at Boulogne. On the other side is a woodcut of the gallant 'Tulipe' parting from his mistress, and beneath them is the song 'Tiens, voici ma pipe, voilà mon briquet!' which Montcontour used to sing at the 'Haunt' to the admiration of Pendennis and Warrington. See the *Newcomes*, vol. i. chap. xxxvi.

because it is striking in itself, and his frequent references to it showed how much it had impressed him. An English party, one of whom told him the story, visited a wild gorge on the Brahmapootra, famous for a specially holy shrine. There they fell in with a fakeer, who had wandered for twenty years through all the holy places between the Himalayas and Cape Comorin. He had travelled on foot; he had never lain down, and only rested at night by putting his arms through the loop of a rope. His body was distorted and his legs and arms wasted and painful. He came with a set of villagers to the shrine which was to be the end of all his wanderings; 'did poojah,' and so finished his task. The villagers worshipped him, and prepared a feast and a comfortable bed; but the fakeer looked sad and said, 'No! When I began my journey the goddess Kali appeared to me and told me what I was to do. Had I done it rightly, she would have appeared again to tell me that she was satisfied. Now I must visit all the shrines once more,' and in spite of all persuasion he set out for another twenty years' penance. 'I assure you,' said the narrator, 'that I thought it very sad and did not laugh in the least.' 'Was not that,' says Fitzjames, 'a truly British comment?'

These and other letters have one peculiarity which I shall not exemplify by quotations. There are some feelings, as I find my father observing in one of his own letters, which it is desirable 'rather to intimate than to utter.' Among them many people, I think, would be inclined to reckon their tender affections for members of their own family. They would rather cover their strongest emotions under some veil of indirect insinuation, whether of playful caress or ironical depreciation, than write them down in explicit and unequivocal assertions. That, however, was not Fitzjames's style in any case.

His words were in all cases as straightforward and downright as if he were giving evidence upon oath. If he thinks ill of a man, he calls him bluntly a 'scoundrel' or 'a poor creature,' and when he speaks of those who were nearest and dearest to him he uses language of corresponding directness and energy. This method had certainly an advantage when combined with unmistakable sincerity. There could be no sort of doubt that he meant precisely what he said, or that he was obeying the dictates of one of the warmest of hearts. But point-blank language of this kind seems to acquire a certain impropriety in print. I must ask my readers, therefore, to take it for granted that no mother could have received more genuine assurances of the love of a son; and that his other domestic affections found utterance with all the strength of his masculine nature. 'I think myself,' as he sums up his feelings on one occasion, 'the richest and happiest man in the world in one of the greatest elements of richness and happiness'—that is, in the love of those whom he loves. That was his abiding conviction, but I shall be content with the general phrase.

One other topic must be just touched. His daughter Rosamond was at this time an infant, just learning to speak, and was with her mother at Simla in both summers, where also his youngest daughter, Dorothea, was born in 1871. Many of the letters to his mother are filled with nursery anecdotes intended for a grandmother's private reading, and certainly not to be repeated here. I mention the fact, however, because it was really significant. When his elder children were in the nursery, Fitzjames had seen comparatively little of them, partly because his incessant work took him away from home during their waking hours, and partly because he had not been initiated into the charm of infantile playfulness,

while, undoubtedly, his natural stiffness and his early stoicism made the art of unbending a little difficult. Under the new conditions, however, he discovered the delightfulness of the relation between a bright little child and a strong grown-up man—at any rate when they are daughter and father. Henceforward he cultivated more directly an affectionate intercourse with his children, which became a great source of future happiness.

His correspondence, though active enough, did not occupy all his leisure on the journey. Parting from home, he says in a letter written in the train near Calcutta to his old friend Venables, was 'like cutting the flesh off my bones'; and ten minutes after beginning his solitary journey from Boulogne, he had sought distraction by beginning an article in the train. This was neither his first nor his last performance of that kind during the journey. He goes on to say that he had written twenty articles for the 'Pall Mall Gazette' between the days of leaving England and of landing at Bombay. 'With that and law I passed the time very pleasantly, and kept at bay all manner of thoughts in which there was no use in indulging myself.' To pour himself out in articles had become a kind of natural instinct. It had the charm, if I may say so, of a vice; it gave him the same pleasure that other men derive from dramdrinking. 'If I were in solitary confinement,' he says, 'I should have to scratch newspaper articles on the wall with a nail. My appetite, natural or acquired, has become insatiable.' When he had entered upon his duties at Calcutta he felt that there were objections to this indulgence, and he succeeded in weaning himself after a time. For the first three or four months he still yielded to the temptation of turning out a few articles on the sly; but he telegraphs home to stop the appearance of some that had been written, breaks off

another in the middle, and becomes absorbed in the official duties, which were of themselves quite sufficient to satiate any but an inordinate appetite for work.

Work, he says, is 'the very breath of my nostrils'; and he fell upon his official work greedily, not so much in the spirit of a conscientious labourer as with the rapture of a man who has at last obtained the chance of giving full sway to his strongest desires. The task before him surpassed his expectations. His functions, he says, are of more importance than those discharged by the Lord Chancellor in England. He compares himself to a schoolboy let loose into a pastrycook's shop with unlimited credit. The dainties provided, in the way of legislative business, are attractive in kind and boundless in quantity. The whole scene impresses him beyond expectation and calls out all his powers. One frequent subject of remark is the contrast between the work and the men who have to do it. The little body of Englishmen who have to rule a country, comparable in size and population to the whole of Europe without Russia, seem to him to combine the attributes of a parish vestry and an imperial government. The whole civil service of India, he observes, has fewer members than there are boys at one or two of our public schools. Imagine the Eton and Harrow boys grown up to middle age; suppose them to be scattered over France, Spain, Italy, Germany, and England; governing the whole population, and yet knowing all about each other with the old schoolboy intimacy. They will combine an interest in the largest problems of government with an interest in disputes as petty as those about the rules of Eton and Harrow football. The society is, of course, very small and mainly composed, as every society must be composed, of commonplace materials. Writing to Miss Thackeray during the outward voyage, he says that he will trespass

upon her province and try to describe his companions. Among them are a set of 'jolly military officers' who play whist, smoke and chaff, and are always exploding over the smallest of jokes. They are not like the people with whom he has hitherto associated, but he will not depreciate them; for they know all kinds of things of which he is ignorant, and are made, as he perceives, just of the 'right kind of metal to take India and keep it.' In a letter to Venables, written a few months later, he describes his position as a sort of 'Benthamee Lycurgus,' and sets forth the problem which he is trying to solve in an official document then in course of preparation: 'Given corrupt natives, incompetent civilians, and a sprinkling of third-rate barristers, how to get perfect judges.' His estimate, indeed, of the merits of the Indian services, considered collectively, was the highest possible. He speaks of them not merely with appreciation but with an enthusiasm such as might have been generated in other men by a life passed in India. In his last speech to the Council he said (and it was no more than he said in private), 'I have seen much of the most energetic sections of what is commonly regarded as the most energetic nation in the world; but I never saw anything to equal the general level of zeal, intelligence, public spirit and vigour maintained by the public service of this country.' Nothing could gratify him so much as the belief that he had in some degree lightened their labours by simplifying the rules under which they acted. Still, taken individually, they were average Englishmen, with rather less than the average opportunities for general intellectual culture; and, like every other small society, given to personal gossip, which was not very interesting to a grave and preoccupied outsider. I find him on one occasion reduced to making remarks upon a certain flirtation, which appears to have occupied the minds of the whole society at Simla; but as the pro-

phecy upon which he ventures turned out to be wrong, there is a presumption that he had not paid proper attention to the accessible evidence.

He naturally, therefore, found little charm in the usual distractions from work. The climate, though it did not positively disagree with him, was not agreeable to him; and he found the material surroundings anything but comfortable. 'I have here found out what luxury is,' he said to a friend in Calcutta on his first arrival; 'it is the way in which I used to live at home.' The best that could be done in India was by elaborate and expensive devices to make up a bad imitation of English comforts. 'As for the light amusements,' he says, they are for the most part 'a negative quantity.' When he is passing the winter by himself in Calcutta, he finds evening parties a bore, does not care for the opera, and has nobody with whom to carry on a flirtation—the chief resource of many people. He has, therefore, nothing to do but to take his morning ride, work all day, and read his books in the evening. He is afraid that he will be considered unsociable or stingy, and is indeed aware of being regarded as an exceptional being: people ask him to 'very quiet' parties. He sticks to his 'workshop,' and there he finds ample employment. He was, indeed, too much in sympathy with Sir G. Cornewall Lewis's doctrine that 'life would be tolerable but for its amusements' not to find a bright side to this mode of existence. A life of labour without relaxation was not far from his ideal. 'The immense amount of labour done here,' he says, 'strikes me more than anything else. The people work like horses, year in and year out, without rest or intermission, and they get hardened and toughened into a sort of defiant, eager temper which is very impressive. . . . I am continually reminded of the old saying that it is a society in which there are no old people and no young

people. It certainly is the most masculine middle-aged, busy society that ever I saw, and, as you may imagine, I don't like to fall behind the rest in that particular.' He laboured, therefore, hard from the first—even harder as time went on; and came to feel the strongest sympathy with the energetic spirit of the body of which he was a member. He made some valued friends in India; chief among whom, I think, was Sir John Strachey, of whom he always speaks in the warmest terms, and whose friendship he especially valued in later years. Another great pleasure was the renewed intercourse with the Cunninghams, who were able, in one way or another, to be a good deal with him. But he had neither time nor inclination for much indulgence in social pleasures.

It will be seen, therefore, that the Indian part of my story must be almost exclusively a record of such events as can take place within the four walls of an office. I shall have nothing to say about tiger-shooting, though Fitzjames was present, as a spectator, at one or two of Lord Mayo's hunting parties; nor of such social functions as the visit of the Duke of Edinburgh, though there, too, he was a looker-on; nor of Indian scenery, though he describes the distant view of the Himalayas from Simla, by way of tantalising an old Alpine scrambler. He visited one or two places of interest, and was especially impressed by his view of the shattered wall of Delhi, and of the places where his second cousin, Hodson, had seized the king and shot the princes. He wrote a description of these scenes to Carlyle; but I do not think that he was especially strong in descriptive writing, and I may leave such matters to others. What I have to do is to give some account of his legislative work. I recognise my incompetence to speak as one possessing even a right to any opinion upon the subject. My brother, however, has left in various forms a very full

account of his own performances,[1] and my aim will be simply to condense his statements into the necessary shape for general readers. I shall succeed sufficiently for the purpose if, in what follows, I can present a quasi-autobiographical narrative. I will only add that I shall endeavour to observe one condition, which I know would have been scrupulously observed by him—I mean the condition of not attributing to him any credit which would properly belong to others. His work formed part of a process, carried on both by his predecessors and successors; and it is not always possible to distinguish his share from that of others.[2]

II. OFFICIAL WORK IN INDIA

A demand for codification was among the traditions of the Utilitarians. Bentham, born in 1748, had preached to deaf ears during the eighteenth century; but in the first quarter of the nineteenth he had gathered a little band of disciples, the foremost of whom was James Mill. The old philosopher had gradually obtained a hearing for his exhortations, echoed in various forms by a growing, confident, and energetic body, and his great watchword was 'Codify.' He had found hearers in foreign countries, especially in Russia, Spain, and various American States;

[1] I depend chiefly upon the official reports of the debates in the Legislative Council; my brother's own summary of Indian legislation in a chapter contributed to Sir W. W. Hunter's *Life of the Earl of Mayo* (1875), ii. pp. 143–226; and a full account of Indian criminal legislation in chap. xxxiii. of his *History of Criminal Law*. He gave a short summary of his work in an address to the Social Science Association on November 11, 1872, published in the *Fortnightly Review* for December 1872. I may also refer to an article upon 'Sir James Stephen as a Legislator' in the *Law Quarterly Review* for July 1894, by Sir C. P. Ilbert, one of his successors.

[2] I may say that he especially acknowledges the share of the work done in his own time by Mr. Whitley Stokes, secretary to the Council, by Sir H. S. Cunningham, for some time acting secretary, and by Mr. Cockerell, a member of the Council.

but his own countrymen had been among the last to listen. Gradually, however, as the passion and prejudice of the war period passed away and the movement which culminated in the Reform Bill of 1832 gathered strength, it became apparent that the stubborn conservatism, even of the great tacit corporation of lawyers, would have to yield. The supremacy of Eldon was beginning to be shaken. Sir Robert Peel began to reform the criminal law about 1827, taking up the work upon which Bentham's friend and disciple, Romilly, had laboured for years with infinitesimal results. Commissions were appointed to work upon legal reforms. With parliamentary reform an era of rapid and far-reaching changes set in, though Bentham died on the eve of entering the land of promise.

When, therefore, the charter of the last India Company was renewed in 1833, it was natural that some place should be found for codification. James Mill, upon whom Bentham's mantle had fallen, held a leading position at the India House, and his evidence before a parliamentary committee had an important influence in determining the outlines of the new system. One of the four members of the Council of the Governor-General was henceforth to be appointed from persons not servants of the Company. He was to attend only at meetings for framing laws and regulations. Macaulay, the first holder of this office, went to India in 1834 and prepared the penal code. One of his assistants, C. H. Cameron, was an ardent Benthamite, and the code, in any case, was an accomplishment of Benthamite aspirations. This code, says Fitzjames, 'seems to me to be the most remarkable, and bids fair to be the most lasting monument of its principal author. Literary fashions may change, but the penal code has triumphantly stood the ordeal of twenty-one years' experience; and, though composed by a man who had scarcely held a brief, has been

more successful than any other statute of comparable dimensions.'[1] The code, however, slept for many years in a pigeon-hole—a fact which Fitzjames considers[2] to be a most striking proof of the reluctance of the English Government to interfere in any way with native institutions. We rubbed on, it seems, with a sort of compromise between English and Mahommedan criminal law until 1860, when the code, after a careful revision by Sir Barnes Peacock, was finally passed into law. That, says Fitzjames, was a singular piece of good fortune. 'An ideal code ought to be drawn by a Bacon and settled by a Coke'; it should combine the highest qualities of literary skill and technical knowledge. Thus drawn, the code became the first specimen of an 'entirely new and original method of legislative expression.' It served as a model for all the later Indian codes. Its method is first to state the 'leading idea' in the most pointed and explicit form; then to give a definite explanation of any terms which admit of a possible doubt; then to give equally definite exceptions; and, finally, to illustrate the whole by applying it to a number of concrete cases.[3] In Macaulay's hands the legal document, freed from the endless verbiage, circumlocution and technicality of English statutes, became a model of logical precision, and was even entertaining as a piece of literature.

The passage of this code was part of a systematic process of codification. An Indian Law Commission, sitting in England, had been appointed in 1853 to carry on the work of consolidating the law. The suppression of the mutiny and the dissolution of the Company were naturally followed by various administrative and legislative reforms. A code of civil procedure was passed in 1859, and a code

[1] *History of Criminal Law*, iii. 299.
[2] *Life of Lord Mayo*, ii. 199.
[3] *History of Criminal Law*, ii. 300–303.

of criminal procedure, as a necessary supplement to the penal code, in 1861. In 1862 Maine went out as legislative member of the Indian Council, and carried on the work of codification in combination with a new Law Commission, appointed in 1861. The Commission ultimately fell out with the Indian Government, and finally resigned in 1870. They seem to have been of opinion that there was undue delay in passing the bills which they prepared. Meanwhile, Fitzjames took up various measures which had been left incomplete, and carried them to completion. Before specifying them so far as will be desirable, I must say something of the machinery by which they were converted into law.

This, as will be seen, greatly impressed Fitzjames by its total dissimilarity to the process of legislation under our own parliamentary system. The Legislative Council consisted, under an Act passed in 1861, of the Viceroy, the Commander-in-Chief, the Governor of the province in which the Council sits, of five ordinary members, and of additional members—not less than six and not more than twelve in number—half of whom must be non-official. The maximum number possible would therefore be twenty. The Viceroy, the Commander-in-chief, and the five ordinary members conducted the whole executive government of the country. The 'legislative department' consisted of a 'secretary to the council of the Viceroy, for the purpose of making laws and regulations.' The secretary during Fitzjames's tenure of office was Mr. Whitley Stokes, who had already served under Maine. During Mr. Stokes's absence on leave for the last year of Fitzjames's service, his place was taken by Henry Cunningham. The member of Council and the secretary drew almost all the bills required. It must be noticed that proposals for legislation were not initiated by the department itself. This principle,

says Fitzjames, 'was scrupulously observed both by Sir Henry Maine and myself.' They did not originate a single measure, except those which repealed, consolidated, and re-enacted existing laws. When a bill had been drawn and introduced into Council, it was circulated to be criticised by the local governments and by district officers, or by persons whose interests might be affected. A special committee was appointed to go through the Act, clause by clause, and consider the suggestions and criticisms which had been received. In the case of one act, it is mentioned that the materials thus collected formed a volume of 500 closely printed pages of minute criticism upon every section of the bill. The committee made such changes as appeared desirable in view of these comments, and the bill, after being in some cases reprinted, published, and circulated, was again brought before the Council. A discussion then took place and amendments might be proposed. When these had been accepted or rejected, the bill was passed and became law upon receiving the assent of the Viceroy, though it might still be disallowed by the Secretary of State in Council.

A code, or even a measure which is to form part of a code, should be a work of art—unequivocal in language, consistent in its logic, and luminous in its arrangement. Like other works of art, therefore, it must be essentially the product of a single mind. It is as impossible, as Fitzjames often repeats, for a number of people to make a code as for a number of artists to paint a picture. The legal artist requires, indeed, to receive information from numerous sources, and to be carefully and minutely criticised at every point by other experts and by the persons whose interests are affected. But the whole can only be fused into the necessary unity by passing through a single understanding. These conditions were sufficiently secured

by the preliminary processes just described. Nor was there any risk that a measure should lose its symmetry in the process of passing through the Council. The Council was composed of men capable, on the one hand, of judging of the expediency of the general policy involved, and willing, on the other hand, to trust for details to the official in charge of the measure, without any desire for captious interference with details. It consisted largely of men, each of whom had important duties to discharge, and was anxious to facilitate the discharge of duties by his colleagues. It was emphatically a body which meant business, and had no temptation to practise the art of 'not doing it.'

There is a quaint contrast, therefore, between the reports of the debates in Council and those which fill the multitudinous pages of Hansard. The speeches, instead of being wordy appeals to constituents, are (so far as one can judge from the condensed official Reports) brief logical expositions of the leading principles involved, packing the essential arguments into the briefest possible space. When a body such as the British Parliament undertakes to legislate, it has certain weaknesses too familiar to require much exposition. If a measure is not adapted to catch the popular ear, it is lucky, however great may be its real importance, in obtaining a hearing at all. It may be thrust aside at any moment by some of the storms of excitement characteristic of a large body agitated by endless party quarrels. Many of the legislators are far less anxious to get business done than to get the doing of business. Everyone who is crotchety, or enthusiastic, or anxious for notoriety, or desirous to serve a party or please a constituency, may set a hand to the work. A man, from the best of motives, may carry some impulsive suggestion. The measure may be tortured and worried out of shape by

any number of alterations, moved without clear apprehension of the effect upon the whole. Trifling details will receive an excessive amount of elaboration, and the most important proposals be passed over with precipitation, because the controversy becomes too heated and too complicated with personal interests to be decided upon reasonable grounds. The two evils of procrastination and haste may thus be ingeniously combined, and the result may be a labyrinth of legislative enactments through which only prolonged technical experience can find its way. I need not inquire what compensations there may be in the English system, or how far its evils might be avoided by judicious arrangements. But it is sufficiently clear what impression will be made upon anyone who tests a piece of legislative machinery by its power of turning out finished and coherent work which will satisfy legal experts rather than reflect the wishes of ignorant masses.

I must now try to indicate more precisely the nature of the task in which Fitzjames had to take a share. He gives a preliminary sketch in one of his first speeches.[1] The law of British India was composed of different elements, corresponding to the process by which the trading company had developed into a sovereign power and extended its sway over an empire. There were, in the first place, the 'regulations' made in the three presidencies, Bengal, Madras, and Bombay, before the formation of the Legislative Council in 1834. Then there were the acts of the Legislative Council which had since 1834 legislated for the whole of British India; and the acts of the subordinate legislatures which had been formed in the two presidencies in 1861. Besides these there were executive orders passed by the Governor-General in Council for the 'non-regulation' provinces (the North-western Provinces,

[1] 'Obsolete Enactments Bill,' February 25, 1870.

the Punjab, Oudh, the Central Provinces, and Burmah). These had more or less introduced the same laws into the regions successively annexed, or such an approximation to those laws as was practicable, and dictated according to an accustomed formula by 'justice, equity, and good conscience.' Certain doubts existed as to the precise legal character of these orders. Their validity had been confirmed by the Act of 1861, but for the future all legislation was to be carried on by the councils. The laws were less numerous and complex than might be inferred from this enumeration. Some were temporary in their nature and others repealed previous legislation. The first thing to be done was to ascertain what laws were actually operative; to repeal the useless and obsolete; and confirm others which, though useful, might be of doubtful validity. It would then become possible to consolidate and codify; so that for every subject there might be a single enactment, and for every province a single body of laws. Much had been already accomplished in this direction under Lord Lawrence when Maine was the legal member of Council; and preparations had been made for carrying the process further.

The measures in which Fitzjames was more or less concerned were made necessary by these conditions. The old Bengal regulations, made from 1793 to 1834, are said to have been 'eminently practical and useful.' But they were made from time to time with a view to particular cases; and their language presupposed familiarity with a variety of facts, as to the position and mutual relations of the different members of the service, and so forth, which were constantly changing as the Company developed, acquired new functions, and redistributed the duties of its subordinates. Such a process naturally left room for gaps in the system which might reveal themselves with awkward

results at critical moments. Thus it turned out in the course of investigations made by the legislative department that nearly every criminal trial which had taken place in Bengal and the North-western Provinces since 1831 had been irregular. The result was that 'people had gone on being hung, transported, and imprisoned illegally for a period of probably nearly forty years.' No substantial injury had resulted, but as legal proceedings multiplied it was possible that awkward questions might be raised. An Act was therefore passed in a day (May 12, 1871) sanctioning the system which had actually grown up, and confirming the previous Acts. Another illustration of the intricacy of the existing system was given by the law as to the Civil Courts in Bengal. To discover what was the constitution of these courts you would have, says Fitzjames (Feb. 10, 1871) to begin by reading Regulations III. and IV. of 1793, and to find out that, though most of them had been repealed, little bits of each remained in force. You would then have to note that, although these bits applied only to a certain small district, they had been extended in 1795 to certain other specified places, and in 1803 to the district ceded by the Nawab Nazim. What that district was might be ascertained from historical records. Continuing such inquiries, you might discover, after consulting thirteen Acts and Regulations, what was the actual state of things. People, of course, really learnt such points by practice and conversation, though their knowledge would probably be in a nebulous condition. The whole system was put upon a clear footing in an Act of thirty-eight sections, prepared by Mr. Cockerell, which was passed on February 10, 1871.

In these cases I imagine that the effect of the legislation was mainly to clear up the existing order and substitute a definite accessible law for a vague rule of thumb. Elsewhere more serious problems were involved. Upon

the annexation of the Punjab in 1849 it was necessary to establish at once a vigorous and cheap system of government. Lord Lawrence, with his brother Henry and Mr. Mansel, were formed into a Board of Administration, and entrusted with dictatorial power. They were instructed to adopt as nearly as possible the system of law which has existed in the North-Western Provinces. That system, however, was vague and cumbrous, and it was impracticable to introduce it into the new province, which required far more rough and ready methods. Lord Lawrence and his colleagues proceeded therefore to draw up regulations. Though these were necessarily crude and imperfect in the eyes of a thorough lawyer, they made it possible to introduce settled order and government, and were the first approach to codes in India. There remained, however, serious differences of opinion as to the degree of legal authority to which they were entitled.

Two of these codes were of great importance. In 1853 Sir Richard Temple had prepared a handbook, under the direction of Lord Lawrence, which came to be known as the 'Punjab Civil Code.' It was a lucid statement, although made by one who was not a specially trained lawyer, of the law supposed to exist in the Punjab, with expositions of parts of the Hindoo and Mohammedan law. The question however, had never been finally settled whether it was merely a text-book or had acquired the force of law by the use made of it and by incidental references in official despatches. It included, for example, a kind of bankruptcy law, under which large amounts of property had been distributed; although, according to some opinions, the whole process was illegal. Conflicting views were held by high authorities. 'As many as six or seven degrees of inspiration had been attributed to different parts of the code,' said Fitzjames (March 26, 1872), 'as to

the relation in which they stood to the rest.' In short, a book originally intended as a guide to administrators of the law had come to be a 'sort of semi-inspired volume,' with varying degrees of 'infallibility.' Moreover, as it led to much litigation and many discussions, it had swelled from a small volume into 'one of those enormous receptacles of notes, comments, sections of Acts, and general observations which pass in England under the name of legal text-books.' (September 5, 1871.) In order to clear up the confusion, Mr. D. G. Barkley had been directed by the Lieutenant-Governor of the Punjab to prepare a volume containing all the regulations which were supposed to have actually the force of law. Many of these were only accessible in official archives. This volume filled 408 closely printed pages, besides various schedules. When carefully examined by Fitzjames this was reduced to an act of fifty-eight sections, and the question as to authority finally set at rest.

A still more important part of the Punjab administration dealt with the land revenue. This, of course, touches the most vital part of the whole system of British government. A famous 'Regulation, VII. of 1822,' had laid down the general principles of land-revenue law. But it was in itself ambiguous, and there were great doubts as to whether it extended to the Punjab, or whether the administrators of the Punjab had full power to lay down such rules as they pleased, subject only to the direction to take the regulation for a model as far as applicable. Different views were taken by the courts of law and by the governors; some opinions would tend to show that the whole series of administrative acts had been illegal, and out of this difficulty had arisen an acrimonious controversy in 1868 upon Punjab tenancy. Meanwhile various 'instructions' had been issued by the executive,

and two books, written by Mr. Thomason, gave directions to 'settlement officers' and 'collectors.' These, says Fitzjames, were 'almost if not quite the best law-books that have ever come under my notice.' They were, however, written from an administrative, not from a legal point of view. In order to ascertain the actual state of things Mr. Robert Cust was instructed to draw up a revenue-code, and forwarded his draft to the legislative department in 1870. The law, as Mr. Cust stated in this document, was 'in a state of lamentable and, to those not trained to the study, unintelligible confusion.' His draft contained 1261 sections, filling 216 quarto pages of small type. It was swelled, however, by a large quantity of detail, dealing with matters which might be left to the discretion of executive officers. The draft was carefully considered by a committee, including the most experienced officials, and in consultation with the actual revenue authorities in the Punjab. A measure of moderate dimensions was framed in accordance with their views and passed on October 30, 1871. One of the critics of the bill observed that it had been thus reduced to a 'set of affecting commonplaces.' Fitzjames replies that, in point of fact, the bill was meant precisely to lay down general principles, leaving details to be settled by the local authorities. One proposal made by him which, as Sir R. Temple observed, showed his 'breadth of view and root and branch grasp of the subject,' indicates the importance of the matter. Substantially it was to make the record of rights, established for the purposes of the revenue, a conclusive evidence (under certain precautions) of the titles of the various persons interested in the land. This was modified on the ground that it was not suited to the tastes of the natives; who, it was said, rather preferred that matters should be left 'at a loose end,' instead of

being definitely wound up once for all. This Act, together with the Act previously mentioned, put an end to 'one of the strangest pieces of intricacy and confusion to be found in Indian law.[1]

Another enactment curiously illustrates some practical results of the undefined degree of authority of the laws in the Punjab. Four hundred years ago—so runs a possibly mythical legend—a certain man was ploughing in a field. The wife of a rich banker was bathing not far off, and laid her necklace of pearls on the bank. A crow took it up and dropped it in the ploughman's field. He presented it to his wife, and proceeded to reason upon the phenomenon. The fowls of the air, he reflected, neither ploughed nor sowed, but they managed to pick up valuables. Why should he not show a similar trust in Providence? He resolved to set up as a freebooter, made proselytes, and finally became the ancestor of a clan. His tribe were moral and decent people at home; they had their religious rites, initiated their children solemnly, and divided their earnings on system. After setting aside $3\frac{3}{4}$ per cent. for the gods, 28 per cent. was divided between the chief and the thief, while the remainder went to the tribe at large. Their morality, however, was conterminous with the limits of the clan. They considered themselves to be in Hobbes's 'state of nature,' with regard to other men. They wandered far and wide through India, and made enough to live in greater comfort than could be got out of legitimate occupations. They were only one among other more important and dangerous tribes of criminals, who adopted the same judicious principle of carrying on their operations at a distance from their homes. The Punjab government had dealt with these tribes by registering them, compelling them to live within certain limits,

[1] *Mayo*, ii. 220.

and settling them upon waste lands. It had been discovered, however, that these regulations were beyond the powers of the executive. The system had to be abandoned and the tribes promptly returned to their old practices. When members of another well-known criminal tribe were arrested on the eve of one of their operations, they were set at liberty by a judicial decision. The proof, it appears, ought to have conformed to the precedent set by certain trials of Fenians in England. A measure was therefore introduced giving power to restore the system which had been previously successful; and sanctioning similar measures in regard to a more atrocious set of criminals, certain eunuchs who made a system of kidnapping children for the worst purposes. It was passed October 12, 1871.

The case illustrates the most obvious difficulties of our position in India. I suppose that the point of view of Thugs and of these respectable robbers seems perfectly obvious and natural to them; but the average Englishman cannot adopt it without a considerable mental effort. In such cases, however, we might at least reckon upon the support of those who suffered from predatory tribes. But there was another department of legislation in which we had to come into conflict with the legal and religious ideas of the great mass of the population. The British rulers of India had been, with sufficient reason, exceedingly cautious in such matters. Their power might crumble to pieces, if it were once believed that we intended to assail directly the great religions of the country, and in India law, custom, and religion are only different aspects of the same thing. In certain cases we had at last resolved to suppress practices which offended the European code of morals. Under the Bengal regulations, the practice of burning widows had been forbidden. Another series of Acts began by the passage of an Act in 1850 which pro-

vided that no one should suffer any legal forfeiture of rights for having ceased to belong to any religious community. This Act was passed in face of vehement opposition and petitions signed by 60,000 natives in and around Calcutta. It practically pledged us to maintain freedom of conscience in matters of religion. It was followed by other measures involving the same principle. In 1856, the re-marriage of Hindoo widows was legalised, and in 1866, native converts to Christianity were enabled to obtain a divorce from wives or husbands who abandoned them in consequence of their religious change. Another Act of 1865, drawn by the Indian Law Commission, regulated the law as to succession to property and the testamentary powers of persons who were not members of any of the native religious communities, and thus recognised that such people had a legitimate legal status. From another application of the same principles arose a proposal in regard to which Fitzjames had to take a conspicuous part. It formed the subject of a very warm debate in the Council, the only debate, indeed, which faintly recalls English parliamentary discussions. Fitzjames, in particular, made two speeches which suggest that he might have been an effective party-leader, and are, in various ways, so characteristic that I must notice them at some length.

The sect of Brahmos, founded by Ram Mohun Roy, was one result of the influence of European ideas on India. It had come to be the most important movement of the kind. It roughly corresponds, I imagine, to English Unitarianism, being an attempt to found a pure theistic religion without the old dogmatic system. Like almost all religious movements, it might be considered either as an innovation or as an attempt to return to a primitive creed by throwing off the corrupt accretions. The sect, like others, had split

into two bodies, the conservative Brahmos, who wanted to put new wine into old bottles, and the progressive Brahmos, who desired new bottles as well as new wine. Both of them disapproved in different degrees of the Hindoo ceremonials. The question had arisen whether they could form legal marriages, and the doubts had been rather increased than diminished by an opinion obtained by the progressive Brahmos from the Advocate-General, Mr. Cowie. Thereupon they applied to Government. Maine, who was then (1868) in office, came to the conclusion that they had had a real grievance. Their creed, briefly, would disqualify them from marrying, whereas we were committed to the principle that varieties of creed should entail no civil disqualifications. Maine accordingly prepared a bill to remove the injustice. He proposed to legalise the marriage of all persons (not Christian) who objected to conform to the rites of the various religions of the country. The knot would be cut by introducing civil marriage into India generally for all who preferred it. This proposal, however, met with general disapproval when the draft was circulated among the local authorities. The ground of objection was that it would introduce too great a change into native customs. It would enable a man to 'play fast and loose' with his religion; to cease, for example, to be a Hindoo for the purpose of marrying, and to be a Hindoo again when he had married. The Government admitted that this objection was conclusive.

When Fitzjames became member of Council, the matter was still under discussion, and it became his duty to prepare a bill, which he introduced to the Council in March 1871. This measure avoided the difficulty by providing a form of marriage for the Brahmos alone. To this, however, he found to his surprise that the conservative Brahmos objected. The essential difficulty was

that of every 'denominational' system. The bill would give a certain legal status to a particular sect. We should then be bound to provide similar measures for any new sects that might arise and for marriages between adherents of different creeds. There would have to be a 'jungle of marriage acts.' And besides this there would be the difficulty of defining by law what a Brahmo precisely was—whether the Progressives or the Conservatives were the real Brahmos, and so forth. Finally, Fitzjames resolved to bring in an Act resembling Maine's, but with this difference, that anyone who took advantage of it must declare that he (or she) was neither a Hindoo, nor a Mohammedan, nor a Parsee, nor a Sikh, nor a Jaina, nor a Buddhist, nor a Christian, nor a Jew.[1] This measure would be applicable to any persons whatever who might hereafter abandon their traditional religion, but it would not enable anyone to break the laws of a religion to which he still professed to belong.

Fitzjames explained his views very fully upon introducing the measure on January 16, 1872. The debate was then adjourned, and upon March 19 other members of the Council made various criticisms to which he again replied at some length. These two speeches give the fullest statement of his views upon a very important question. They deal in part with some purely legal questions, but I shall only try to give the pith of the views of policy which they embody. I may briefly premise that the ground taken by his opponents was substantially the danger of shocking native prejudices. The possibility that the measure would enable rash young men to marry dancing-girls out of hand was also noticed, but, I fancy, by way of logical makeweight. It was admitted that the Brahmos

[1] The parties had also to be of certain ages, not already married, and not within certain degrees of relationship.

had a claim, but it was strongly urged that it would be enough if, in accordance with the former proposal, an act were passed dealing with them alone. One member of the Council, I notice, complains that the demand is associated with talk about 'nationality,' 'fraternity,' and 'equality'—a kind of talk for which Fitzjames had remarkably little sympathy. It is of the more importance to point out what were the principles which he did admit. His main contention was simple. Maine, he said, was absolutely right in deciding that, where an injustice was proved to exist, we should not shrink from applying a remedy. 'I think that one distinct act of injustice, one clear instance of unfaithfulness to the principles upon which our government of India depends, one positive proof that we either cannot or will not do justice to all classes, races, creeds or no-creeds, in British India would in the long run shake our power more deeply than even financial or military disaster. I believe that the real foundation upon which the British Empire in this country rests is neither military force alone, as some persons cynically assert' (though such power is no doubt an indispensable condition of our rule), 'nor even that affectionate sympathy with the native population, on which, according to a more amiable, though not, I think, a truer view of the matter, some think our rule ought to rest—though it is hardly possible to overrate the value of such sympathy, where it can by any means be obtained. I believe that the real foundation of our power will be found to be an inflexible adherence to broad principles of justice common to all persons in all countries and all ages, and enforced with unflinching firmness in favour of, or against, everyone who claims their benefit or who presumes to violate them, no matter who he may be. To govern impartially upon these broad principles is to govern justly, and I believe that not

only justice itself, but the honest attempt to be just, is understood and acknowledged in every part of the world alike.'

In the next place the principle of religious equality, 'properly understood, is just as much one of these principles as the principle of suppressing war, famine, and crime.' Properly understood it means that all sects are to be encouraged and, if necessary, are to be compelled to live in peace with each other; and not to injure those who change their religion. This is the principle, moreover, which we have practically adopted, and which is indeed necessary under the circumstances. The native marriage law is 'personal,' not territorial. It depends upon a man's religion, not upon the place of his abode. Hence you must choose between forbidding a man to change his religion and permitting him to change his law. But to forbid conversion would be obviously impossible, and we in fact allow Christian converts to change their legal status. Why is not a similar liberty to be granted to others who have abandoned their religion? Because Christianity is true and all other religions false? That would be the only relevant answer, and many people would really like to give it; but it is refuted by stating it. We cannot attack the Hindoo or Mohammedan religions. If, therefore, we took this ground, we should simply have a conspiracy of four or five dominant sects, each denouncing the others as false, but all agreeing to worry and oppress all outsiders. Such a position is impossible for us. The real objection to the bill was simply that it recognised the fact that many persons had abandoned their religion; and also recognises the fact that they had a right to abandon it.

Here, then, is one of the cases in which the argument from native opinion must be faced. 'It is a grave thing to legislate in opposition to the wishes of any section of

the native community; but it is also a grave, a very grave thing for the Government of India deliberately to abstain from doing that which it has declared to be just and right.' If you help the Brahmos alone, what will you say to the 'radical league,' which repudiates all religious belief? When they ask to have their marriages legalised, will you reply, 'You are a small body, and therefore we will do you an injustice'? This is one of the ultimate points which we are forced to decide upon our own convictions. Religious liberty and equality can be no more reconciled with Hindoo and Mohammedan orthodoxy than with some forms of Catholicism. But it is impossible to say that we will not do that which we admit to be urgent because we are afraid of orthodox Mohammedans and Hindoos. And here is the answer to one member who made light of telling a converted young man of enlightened mind that, unless he saw his way to being a Christian, he might be ordered to conform to the customs of his forefathers. It was better that he should make the sacrifice, than that the minds of the masses should be disquieted. Was there, he asked, any real hardship in that? Yes, replies Fitzjames, there would be the greatest and most cruel injustice. 'It would be a disgrace to the English name and nation.' A young man goes to England and wins a place in the Civil Service. He learns from an English education to disbelieve in his old creeds; and when he goes back you tell him that he shall not be capable of marriage unless he will either falsely pretend to be a Christian, or consent to have his tongue burned with a red-hot iron and drink cow's urine in order to regain his caste. One of the native correspondents had complained rather naïvely that the law would be used to enable a man to escape these 'humiliating expiations.' Would they not be far more humiliating for English legislation? What did you mean, it would be

asked, by your former profession that you would enforce religious equality? What of the acts passed to secure the immunity of all converts from legal penalties? Were they all hypocritical? I would rather submit to the displeasure of orthodox Hindoos, says Fitzjames, than have to submit to such taunts as that. 'The master objection against the bill, of which the rest are but shadows, and which unites in opposition to it men who mutually denounce each other's creeds, and men who despise those who care enough about religion to be unwilling to call that sacred which they hold to be a lie, is that it will encourage unbelief.' That may be a fair argument from Hindoos and Mohammedans; but it is strange in the mouths of those who maintain missionary societies and support schools and colleges—English education 'leads straight away from all points of native orthodoxy.' 'How can we sow the seed and refuse to recognise the crop?' When we have shut up our schools, renounced our famous legislation, permitted infanticide and *suttee*, we may get credit for sincerity in the objection; 'till then people will say that what we really fear is not the spread of unbelief, but the hostility of believers.' For such hypocrisy Fitzjames could never feel anything but a righteous contempt.

I must now turn to the important legislative measures which were more essentially a part of the general system of codification. A code of civil procedure had been passed in 1859, and codes of criminal law and criminal procedure in 1860 and 1861. The Indian Law Commission had also prepared laws upon contract and evidence, which were still under consideration; Fitzjames had to carry the process one stage further. In regard to the famous Penal Code, of which he always speaks with enthusiasm, his action was confined to filling up a few omissions. The case of a convict in the Andaman Islands, for example,

who had made a desperate attempt to murder a gaoler, and could receive no further punishment because he was already sentenced to imprisonment for life, the maximum penalty for attempts to murder, suggested a flaw. Such offences were henceforth to be punishable by death. The only point of general interest was the case of seditious libels. A clause, prepared for the original bill, had been omitted by an unaccountable accident. Maine had already been in correspondence with Sir Barnes Peacock upon this subject in 1869. When, however, in the summer of 1870, Fitzjames proposed the insertion of a clause, it was supposed that he had hastily prepared it in consequence of certain reported disturbances in the previous spring. He was, therefore, taunted with having been a member of the 'fourth estate,' and now desiring to fetter the liberty of the press. He therefore confessed, and it must be admitted that it required less courage in him than it had required in his grandfather to confess, to the sin of having written for the newspapers. In point of fact, however, as he pointed out, the proposed section, which was from the original draft of the case as framed by the Commission, was less severe than the English law. Briefly, a man was to be punishable for writings of which it was the obvious intention to produce rebellion. A journalist might freely abuse officials and express disapproval of a particular measure, such, for example, as a tax. The disapproval, again, might tend to general disaffection. But unless there were a direct intention to stimulate resistance to the law, he would not be guilty. Fitzjames thought that to invoke the phrase 'liberty of the press' in order to permit direct provocatives to crime, whether against the public or against individuals, was a grave misapplication of popular phrases.

Upon another closely connected subject, Fitzjames, if he originated little, spent a very great deal of labour.

The Penal Code had been necessarily followed by a Code of Criminal Procedure, which defined the whole system of the English administration of justice in India.[1] Courts of justice had been gradually introduced when the British establishments were mere factories, and had gradually grown up, as our power increased and the borders of the empire widened, into a most elaborate and complex organisation. Although, in a general way, the English institutions had served as a model, it had diverged very far from its originals. The different classes of Indian magistrates are carefully graded; there is a minute system for subordinating the courts to each other; they are superintended in every detail of their procedure by the High Courts; and, in brief, the 'Indian civilians are, for the discharge of all their judicial and other duties, in the position of an elaborately disciplined and organised half-military body.' Such words would obviously be inapplicable to the English magistrate. While, therefore, the Penal Code was in the main a version of English law, the Code of Criminal Procedure defined the various relations and processes of an official body entirely unlike anything existing in England.

The code originally passed in 1861 had been amended by an Act of 1869, and Fitzjames observed (June 28, 1870 that he proposed a reform which was 'almost typographical.' The two laws might, as the Law Commission had suggested, be combined in one by slightly altering their arrangement; though the opportunity might be taken of introducing 'a few minor alterations.' On December 9 following, however, he announces that he has now examined the code and had never read 'a more confused or worse-drawn law' in his life. He proceeds to show by various illustrations that the subjects treated had been

[1] See the account of this in *History of Criminal Law*, iii. 324–346.

mixed up in such a way as to make the whole unintelligible. He had been obliged to put off the attempt to understand it till he could get information from outside. He had, however, prepared a draft of the bill, and a Committee was appointed to consider it. The measure did not finally come before the Council until April 16, 1872. He then observes that he has not had the presumption to introduce 'modifications of his own devising into a system gradually constructed by the minute care and practical experience of many successive generations of Indian statesmen.' He has regarded himself 'less as the author of the bill than as the draftsman and secretary of the committee by whom all the important working details have been settled.' He has been in the position of the editor of a law-book, arranging as well as he could, but not introducing any new matter. To attempt any sudden changes in so complex a machinery, which already strains so severely the energies of the small number of officials employed in working it, would be inevitably to throw the whole out of gear.

This committee, he says,[1] which included men of the widest Indian experience, such as Sir G. Campbell, Sir R. Temple, and Sir John Strachey, met five days in the week and usually sat five hours a day, and the process continued for 'some months.' They discussed both substance and style of every section, and examined all the cases decided by the courts which bore upon the previous code. These discussions were all carried on by conversations round a table in a private room. 'The wonderfully minute and exact acquaintance with every detail of the system' possessed by the civilians 'made an ineffaceable impression' upon his mind. They knew, 'to a nicety, the history, the origin and object of every provision in the code.' The

[1] *History of Criminal Law*, iii. 345.

discussions were consequently an 'education not only in the history of British India but in the history of laws and institutions in general. I do not believe,' he says, 'that one act of Parliament in fifty is considered with anything approaching to the care, or discussed with anything approaching to the mastery of the subject with which Indian Acts are considered and discussed.' When the committee had reported, the code was passed into law 'after some little unimportant speaking at a public meeting of the Council,' (which turned, I may say, principally upon the question of the policy of allowing native members of the service to sit in judgment upon Europeans). 'This was possible, because in India there are neither political parties nor popular constituencies to be considered, and hardly any reputation is to be got by making speeches. Moreover, everyone is a man under authority, having others under him.'

A condensed account of the code and the institutions which it regulates will be found in Fitzjames's 'History of the Criminal Law,' from which I quote these words: 'If it be asked,' he says, 'how the system works in practice, I can only say that it enables a handful of unsympathetic foreigners (I am far from thinking that if they were more sympathetic they would be more efficient) to rule justly and firmly about 200,000,000 persons of many races, languages, and creeds, and, in many parts of the country, bold, sturdy, and warlike. In one of his many curious conversations with native scholars, Mr. Monier Williams was addressed by one of them as follows: "The Sahibs do not understand us or like us; but they try to be just and do not fear the face of man." I believe this to be strictly true.' 'The Penal Code, the Code of Criminal Procedure, and the institutions which they regulate, are somewhat grim presents for one people to make to another, and are

little calculated to excite affection; but they are eminently well calculated to protect peaceable men and to beat down wrongdoers, to extort respect and to enforce obedience.' The code was re-enacted in 1882 under the care of Mr. Whitley Stokes. It was then extended to the High Courts, which had been previously omitted, and alterations were made both in arrangement and in substance. Of these alterations Fitzjames says that he does not consider them to be improvements; but upon that point I am not competent to form any opinion.

Closely connected with the subject of procedure was another which was treated in his most original and valuable piece of legislation. The Indian Law Commission had in 1868 sent out the draft of an 'Evidence Act,' which was circulated among the local governments. It was unanimously disapproved as unsuitable to the country. It presupposed a knowledge of English law, and would not relieve Indian officials from the necessity of consulting the elaborate text-books through which that law was diffused. Fitzjames, therefore, prepared a new draft, which was considered by a committee in the winter of 1870–1, and after their report at the end of March was circulated as usual. It was finally passed on March 12, 1872, and a full account of the principles is given in his speeches of March 31, 1871, and March 12, 1872. I have already spoken of his treatment of the law of evidence in the 'View of the Criminal Law.' I will here point out the special importance of the subject under the conditions of Indian legislation. In the first place, some legislation was necessary. An Evidence Act, already in existence, embodied fragments of English law. It would still be in force, inasmuch as English officials were directed, according to the sacred formula, to decide by 'equality, justice, and good conscience.' These attractive words meant

practically 'an imperfect understanding of an imperfect recollection of not very recent editions of English text-books.' Something might be said for shrewd mother-wit, and something for a thorough legal system. But nothing could be said for a 'half and half system,' in which a vast body of half-understood law, without arrangement and of uncertain authority, 'maintains a dead-alive existence.' We had therefore to choose between a definite code, intelligible to students, who would give the necessary attention, and no code at all. The Evidence Bill, said one eminent colleague, ought to consist of one clause: 'all rules of evidence are hereby abolished.' Against this attractive proposal Fitzjames argues substantially as he had argued in the 'View.' Rules of some sort have always been found necessary. Daniel's feeble 'cross-examination of the elders in the case of Susannah' illustrates the wonder with which people once regarded methods of testing evidence now familiar to every constable. In later periods all manner of more or less arbitrary rules had been introduced into simple codes, prescribing, for example, the number of witnesses required to prove a given fact. The English system, although the product of special historical developments, had resulted in laying down substantially sound and useful rules. They do in fact keep inquiries within reasonable limits, which, in courts not guarded by such rules, are apt to ramble step by step into remoter or less relevant topics, and often end by accumulating unmanageable masses of useless and irritating scandals. Moreover, they would protect and guide the judges, who, unless you prohibited all rules whatever, would infallibly be guided by the practice of English courts. To abolish the rules of evidence would be simply to leave everything 'to mere personal discretion.' Moreover, the rules have 'a real though a negative' value

as providing solid tests of truth. The best shoes will not enable a man to walk nor the best glasses to see; and the best rules of evidence will not enable a man to reason any better upon the facts before him. It is a partial perception of this which has caused the common distrust of them. But they do supply 'negative' tests, warranted by long experience, upon two great points. The first is that when you have to make an inference from facts, the facts should be closely connected in specified ways with the fact to be decided. The second is, that whatever fact has to be proved, should be proved by the best evidence, by the actual document alleged, or by the man who has seen with his own eyes or heard with his own ears the things or the words asserted to have occurred.

If, however, these rules are substantially the expressions of sound common sense, worked out by practical sagacity, it is equally true that 'no body of rules upon an important subject were ever expressed so loosely, in such an intricate manner, or at such intolerable length.' The fact is that the intricate and often absurd theory by which they are connected came after the 'eminently sagacious practice' which the theory was intended to justify. English lawyers, by long practice in the courts, acquire an instinctive knowledge of what is or is not evidence, although they may have hardly given a thought to the theory. The English text-books, which are meant for practical purposes, are generally 'collections of enormous masses of isolated rulings generally relating to some very minute point.' They are arranged with reference to 'vague catchwords,' familiar to lawyers, rather than to the principles really invoked. One of the favourite formulæ, for example, tells us, 'hearsay is no evidence.' Yet 'hearsay' and 'evidence' are both words which have been used in different senses ('evidence,' for example, either means a fact

or the statement that the fact exists), and the absence of any clear definitions has obscured the whole subject.

Now as Indian officials have to manage very difficult investigations, with no opportunity for acquiring the lawyer's instinct, and without the safeguard afforded in England by a trained bar, thoroughly imbued with the traditions of the art, they were in special need of a clear, intelligible code. By 'boiling down' the English law, and straining off all the mere technical verbiage, it would be possible to extract a few common-sense principles and to give their applications to practice in logical subordination and coherence. That which seems to be a labyrinth in which it is hopeless to find the way until experience has generated familiarity with a thousand minute indications at the various turning points, may be transformed, when the clue is once given, into a plan of geometrical neatness and simplicity.

This was what Fitzjames endeavoured to do for the Indian law of evidence. When the draft was circulated the utility of the work was generally admitted in the reports returned, but some hostile criticisms were also made. One gentleman, who had himself written upon the subject, remarked that it had been apparently constructed by going through 'Taylor on Evidence,' and arbitrarily selecting certain portions. To this Fitzjames replied that every principle, applicable to India, contained in the 1508 royal octavo pages of Taylor, was contained in the 167 sections of his bill, and that it also disposed fully of every subject treated in his critic's book. He accounts for the criticism, however, by pointing out that the limits of the subject had been very ill defined, and that many extraneous matters belonging properly, for example, to the law of procedure, had been introduced. A code which diverges from the general principles into the particular kind of evidence

required in various cases, might spread into every department of law. Fitzjames, however, partly met his critic by admitting certain additions of too technical a nature to be mentioned. I may observe that one source of the intricacy of the English law was avoided. In England, at that time, the erroneous admission or rejection of a single piece of evidence might have made it necessary to try the whole Tichborne case over again. In India this had never been the case, and it was provided that such errors should not be ground for a new trial unless it were proved that they had caused a substantial failure of justice. I will only add that Fitzjames, as before, endeavoured in an 'introduction' to connect his legal theory with the logical doctrines of Mill. He was criticised in a pamphlet by Mr. G. C. Whitworth which he admits to be judicious, and afterwards corrected his definitions accordingly.[1] He did not think his principle wrong, but considered the form to be inconvenient for practical application. Upon this, however, I need not here dwell.[2]

Two other important measures of codification were passed during Fitzjames's tenure of office. The 'Limitation of Suits' Act, passed March 24, 1871, was, as he stated, entirely due to Mr. Whitley Stokes. Fitzjames expressed his high admiration for it in a speech in which he takes occasion to utter some characteristic denunciations of the subtleties of English law, connected with the subject of this Act. Did human memory run to the year 1190, when Richard I. set out on the third crusade, or to 1194, when he returned? That was one of the problems propounded by Lord Wensleydale, who for many years

[1] *Digest of the Law of Evidence.* Fourth edition, 1893, pp. 156–9.

[2] An edition of the *Evidence Code*, with notes by Sir H. S. Cunningham, reached a ninth edition in 1894. It gives the changes subsequently made, which are not numerous or important.

devoted extraordinary powers of mind to quibbles altogether unworthy of him. There is no more painful sight for a man who dislikes the waste of human energy than a court engaged in discussing such a point. Four judges, with eminent counsel and attorneys, will argue for days whether Parliament, if it had thought of something of which it did not think, would have laid down an unimportant rule this way or that. It would have been better for the parties to the suit to toss up, and leave the most convenient rule to be adopted for the future.

The 'Contract Act' had been prepared by the Indian Law Commission, and had been under discussion for five years. The final revision had taken place in the winter of 1871–2, and Fitzjames specially acknowledges the help of two colleagues in the Legislative Council, Messrs. Bullen Smith and Stewart, gentlemen engaged in business at Calcutta. The subject is too technical for me to approach it. One point may just be mentioned: If a man steals a cow, and sells it to an innocent purchaser, who is to suffer the loss when the theft is discovered? The original owner, said the Law Commission. The purchaser, said the Legislative Council. Stealing cows is one of the commonest of Indian offences—so much so that it is a regular profession to track stolen cattle. But if the buyer has a good title to the cow, unless he knows it to be stolen, the recovery would be generally impossible. Cattle-stealers would flourish, and would find an asylum in our territory, where the law would differ from that of the native states. This appears to indicate one of the subjects of discontent of the Law Commission, who desired to pass measures unsuitable, according to the Indian Government, to the conditions of the country.

I have now mentioned, I think, the most important measures in which Fitzjames was concerned, whether as

having framed the original draft or simply as officially responsible for the work of others. He had, of course, more or less share in many other Acts, some of much importance. Little more than a month after his arrival he had to introduce a bill upon Hindoo wills; and, in speaking on the occasion, elaborately discussed its relation to Hindoo theories as to property, and especially as to the right of creating perpetuities. This speech appears to have made a very strong impression upon his hearers. In the last months of his residence he had charge of a bill upon oaths and declarations, which suggests some curious points of casuistry. What, for example, is to be done in regard to people who believe that they will be damned if their sworn statements are inaccurate, unintentionally or otherwise, and who, inferring that damnation is tolerably certain, argue that they may as well tell a big lie as a small one? How, again, is a European to appreciate the value of an oath made upon a cow's tail or a tiger's skin? I will not go into such discussions, noting only that he seems to have been profoundly interested in them all.

Fitzjames, of course, served upon many committees, and had to attend to the current business of his office. In the last three or four months of his stay, the larger measures which I have mentioned were finally passed into law. The Punjab Land Revenue Act was passed on October 30, 1871; the Evidence Act on March 12, 1872; the Native Marriages Act on March 19; the Punjab Laws on March 26; the Contract Act on April 9; and the Criminal Procedure Act on April 16. In proposing the passage of the Contract Act he took occasion to give his view of the result which had so far been reached in the direction of codifying the Indian laws. It might be said, in a summary way, that consolidation was nearly satisfactory in regard to 'current legislation,' that is,

legislation required with a view to particular cases. In regard to 'procedure,' the process of codification was complete, with two or three exceptions. It would be complete when the code of civil procedure had been re-enacted; when the revenue procedure in the Central Provinces had been regulated, and another measure or two passed. Finally, the 'substantive law' includes many most important subjects—the laws of inheritance, for example, and the land laws, which are determined by the native customs, and which, for obvious reasons, we cannot touch. When two or three gaps to which he pointed (the law of 'Torts,' for example) had been filled, we should have as much codification as 'would be required for a length of time.' The Statute Law of India would then be comprised in four or five octavo volumes, and the essential part of it in five or six Acts, which might be learnt in a year of moderate industry. A young civilian who knew the Penal Code, the Succession Act, the Contract Act, the two Procedure Codes, the Evidence Acts, the Limitation Act, and the Land Revenue Acts of his province would know more than nineteen barristers out of twenty when they are called to the bar; and all this would go into a moderately sized octavo volume. His successor, he thought, would be able to accomplish all that was required. He observes, however, emphatically, that a process of re-enactment would be always required. It is necessary to keep laws steadily up to date, having regard to decisions of the courts upon new cases, and to any legislative changes. No important Act should be left without amendments for more than ten or twelve years. A constant process of repairing is as necessary to a system of legislation as it is to the maintenance of a railway.

I am, as I have already said, incompetent to form any opinion as to the intrinsic value of these codes. One

able critic, Sir C. P. Ilbert, in the 'Law Quarterly,' observes that their real merit is that they were 'suitable and sufficient for the needs which they were intended to meet. What was urgently needed for India was a guide for the judge or magistrate who has had no legal training, who derives little or no assistance from the bar, and who has to work at a distance from a law library.' Fitzjames's legislation, he thinks, was 'admirably adapted' for advancing the previous Indian system a step further; although his codes might not meet the requirements of the present generation of English lawyers. Sir C. P. Ilbert, I may add, speaks very strongly of the 'educational value' of the Contract Act in particular, as shown by his experience of Indian Civil Service examinations. He thinks that Fitzjames's other writings and codes have a similar merit. A gentleman of high judicial position and very great Indian experience has expressed to me his high admiration of the Evidence Act. It is, he says, 'a wonderful piece of work, boiling down so much into so small a compass.' It is 'an achievement to be proud of,' although parts of it, he adds, are open to criticism, and especially to the criticism that it is 'over the heads of those who have to deal with it.' It presupposes outside knowledge which they often do not possess. These criticisms do not altogether coincide, and I shall not endeavour to reconcile or discriminate. I am content to say that I have heard on all hands, from persons qualified to express an opinion here, that Fitzjames's work made a marked impression upon Indian legislation, and, with whatever qualifications, is admitted to have been of very great service to the administrators of the country.

I shall venture, however, to add a word or two upon the qualities, mental and moral, thus displayed. Sir C. P. Ilbert says that Fitzjames was a 'Cyclopean builder. He

hurled together huge blocks of rough-hewn law. It is undeniable that he left behind him some hasty work,' which his successors had to remove and replace. In half the ordinary term of office he did work enough for five law members, and 'left the Legislative Council breathless and staggering,' conscious of having accomplished 'unprecedented labours,' but with some misgivings as to the quality of parts of the work. Fitzjames, that is, was a man of enormous energy, who fulfilled only half of the famous maxim; he laboured 'without rest,' but not 'without haste.' As for the energy displayed, there can, I imagine, be only one opinion.[1] And if unflagging zeal in doing the duty which lies nearest, and an entire devotion of a man's whole powers of mind to what he sincerely believes to be a great and worthy task, be not virtues deserving of all respect, I do not know what qualities are entitled to that name. A vigorous constitution of mind and body applied to the discharge of appropriate duties describes a most felicitous combination of circumstances, and indicates a character which I, at least, cannot regard without cordial admiration. It is true that he loved his work; but that is just what constitutes his merit. I might express my feeling more strongly if I were less closely connected with its object.

The direction, though not the extent, of the shortcomings of such an intellectual force may be easily imagined. If there was one thing which Fitzjames hated it was needless subtlety, and the technicalities which are the product of such subtlety—the provision of a superfluous logical apparatus, which, while it gives scope for ingenuity, distracts the mind from the ends for which it is ostensibly designed. I have quoted enough to show

[1] Sir C. P. Ilbert, however, is mistaken in supposing that Fitzjames wrote his *Liberty, Equality, Fraternity* during his official labours.

the intensity of his longing for broad, general, commonsense principles, which was, indeed, his most prominent intellectual characteristic. Now a code should, as I take it, like the scientific classification of any other subject-matter, combine this with intellectual excellence at the opposite pole. The scientific classification, when once made, should appear, as the botanists say, to be natural, not artificial. If fully successful, it should seem as if it could not but have been made, or as if it made itself. Every subdivision should fall spontaneously into its right place without violence or distortion. The secret of achieving such a result is, I suppose, the selection of the right principles of division and subdivision from the first. When it appears that any given object refuses to fit itself conveniently into any one of our pigeon-holes, its obstinacy may betray a defect in the original system; and the code, like other artistic wholes in which every part has some definite relation to every other, may require a re-manipulation throughout. Now, if I understand Fitzjames's intellectual temperament rightly, this indicates the point at which his patience might begin to fail. When he met with some little specimen which would not go of itself upon any of his previous arrangements, he would be apt to treat it with disrespect, and possibly to jam it in with too rough and ready a hand into the nearest compartment. In so doing he might really be overlooking the indication of a fault in the system, reaching further than he suspected. An apparent subtlety may really correspond to an important distinction, and an outward simplicity be attained at the cost of some internal discord. In short, the same kind of defect which prevented him from becoming an accurate classical scholar, or from taking a sufficient interest in the more technical parts of his profession, would show itself in the delicate

work of codification by a tendency to leave raw edges here and there in his work, and a readiness to be too easily satisfied before the whole structure had received the last possible degree of polish. Thus I find, from various indications which I need not specify, that some of his critics professed to have discovered flaws in his work, while he honestly thought the criticism superfine, and the errata pointed out such as concerned a mere corrector of the press rather than a serious legislator for practical purposes. But I must not even attempt to conjecture which was right and which was wrong, nor how far there might be right and wrong upon both sides.

III. INDIAN IMPRESSIONS

These rather vague presumptions must take the place of any deliberate estimate of the value of Fitzjames's achievements in India. I must, however, say something more of the impression made upon his own mind. I have already indicated some of the convictions suggested to him by his experience, and I shall have to speak in the next chapter of the book in which he endeavoured to set forth their application to political principles in general. Here I will summarise his view of the special principles of Indian legislation. It is given very emphatically in Sir W. W. Hunter's 'Life of Lord Mayo,' and will, I think, materially elucidate his position in regard to certain wider problems.

He observes, in the first place, that the legislative department had been accused of over-activity and of a desire to introduce English law with too little regard to native ideas. The chief legislative reform required for India, he was often told, was the abolition of the legislative department—an assertion which, I should guess, when

made in his presence, must have given rise to some rather lively discussions. He thought that this view rested mainly upon certain prejudices very generally entertained though not often stated in precise words. Many civilians really objected to government by law, holding that in India law should be overridden by 'equity,' or, briefly, that the district officers should decide by their own views of each particular case. Such persons, again, frequently held that the British rule had succeeded to the absolute power of the old native states, and that the vigour of the executive should be fettered by as few laws as possible. This feeling had been strengthened by the fact that the old supreme courts were originally established as a check upon the powers of the Government. The two powers came to be regarded as in a position of natural antagonism, and nothing struck him more than the conviction of the older members of the service that lawyers were their natural enemies, and the law a mysterious power with the special function of trammelling executive action. Various little encounters in the Legislative Council testify to this difference of sentiment. When he explained to a military officer of rank the power conferred by the Criminal Tribes Act, mentioned above, the officer replied, 'It is quite a new idea to me that the law can be anything but a check to the executive power.' The same sentiment underlay the frequent complaints of the want of 'elasticity' of the law. When brought to a point these complaints always related to certain regulations for taking down and recording evidence. What was really desired by the persons concerned was elasticity in the degree of attention which they might pay to their most important duties. So an officer complained that he could not punish certain persons whom he knew to be murderers, though witnesses were afraid to appear. What he really wanted, it was implied,

was power to put people to death on the secret information of irresponsible witnesses.

Hence, the first question is whether India should be governed by law or by merely personal discretion. Baseless as the 'discretion' theory may be, it has a strong unavowed influence. And yet it is the very specific difference of our rule that it is rule by law and not despotism. Englishmen could have no desire simply to set up a new despotism differing from the old only in being administered by Englishmen instead of natives. The moral difference is unmistakable. Decisive government by law gives the only real security for life or property, and is the indispensable condition for the growth of wealth. Nor is a compromise more possible between law and despotism than between straight and crooked. The essence of one system is that no one shall suffer in person or property except according to law. The essence of the other is that security of person and property is dependent upon the will of the ruler. Nowhere is this shown more clearly than in India. The remedy of the poorest peasant in the country against any wrongful action of the Government in India is far clearer and more simple than the remedy of the richest and most influential man against the Government in England.[1]

The absolute necessity of government by law is shown, however, most strikingly by a process going on throughout the country—the growth of private rights, and especially of rights in land. Under the old despotic systems, the place of law was taken by a number of vague and fluctuating customs, liable to be infringed at every moment by the arbitrary fancies of the rulers. Society was 'worn to the bone.' It had become an aggregate of villages, each forming a kind of isolated units. In some districts even the villages had been broken up and no political

[1] *Life of Mayo*, ii. 163.

organisation remained except that between landholders and individual husbandmen, which was really a relation between oppressors and oppressed. Elsewhere, there was a chaos of village communities, dominated by the most inorganic and ill-defined of aristocracies and monarchies. The village communities are decaying, and, in spite of regrets prompted by various reasons, they decay because they represent a crude form of socialism, paralysing to individual energy and inconsistent with the fundamental principles of our rule. The cardinal duty which we have to discharge in India is to keep the peace. The villages formed self-contained communities, each regulating its own affairs, and bound by loose customs, leading to quarrels which could only be settled by blood-feuds and the strong hand. Strict laws and a rigid administration of justice are incompatible with such modes of determining disputes between man and man and village and village. The communities, therefore, break up when the law admits of no coercive action except its own. If we will not allow a man to gather his friends, arm them with bludgeons, and march out to settle a boundary dispute with a neighbouring village, we must settle the boundary ourselves, and we must settle it by distinct rules—that is, we must enforce laws. Peace and law go together, as violence and elastic custom go together. Now we must keep the peace, and, therefore, we must rule by law.

Rule by law, however, though necessary, is not a necessary evil but an invaluable benefit. Laws are necessary to vigorous administration. When Lawrence and his colleagues undertook to rule the Punjab, it was a popular notion that they ruled by mere personal discretion. The fact, as already noticed, was the very reverse. Their first step was to establish far better, simpler, and more scientific systems of law than were in force in the older

provinces. Moreover, and this is one of Fitzjames's most characteristic theories, 'the establishment of a system of law which regulates the most important part of the daily life of a people constitutes in itself a moral conquest, more striking, more durable, and far more solid than the physical conquest which renders it possible. It exercises an influence over the minds of the people in many ways comparable to that of a new religion.' This is the more significant because the instructed natives who study the laws, both Mohammedan and Hindoo, have been accustomed to identify law and religion. 'Our law is, in fact, the sum and substance of what we have to teach them. It is, so to speak, the gospel of the English, and it is a compulsory gospel which admits of no dissent and of no disobedience.' Finally, if Government does not make laws, each officer or group of officers will have to make their own. Practically they will buy a few English law-books and apply them in a servile way to the cases which turn up.

India, then, must be ruled by law. By what law? Shall we endeavour to govern on native principles and by native agency? To this theory, which has attracted many friends, he replies, No; first, because Indian ideas about government are wrong; they are proved to be wrong by experience, which shows that they led to anarchy and demoralisation; and, secondly, because they have produced men and institutions unfit for government. If, therefore, we tried to rule by Oriental methods and agents, we should either make ourselves responsible for their oppressions, or we should have to keep them in order, and that is to rule by law. We should, again, have to watch perpetually over the mass of personal intrigue which is the 'curse of every despotic state.' We should require a large native army and live under a perpetual threat of mutiny. In fact, the mutiny of 1857 really represented the explosion

and the collapse of this policy. Finally, we should have to choose between Mohammedans and Hindoos, and upon either alternative a ruler not himself belonging to the religion comes into inevitable conflict with their fundamental principles.

We have, then, no choice but to rule by law and to frame laws upon European principles. Here, it is necessary to guard against misunderstandings which have given rise to the charge of over-legislation. 'European principles' mean those principles which have been shown by our experience to be essential to peace, order, wealth, and progress in arts and sciences. 'No one,' says Fitzjames, 'can feel more strongly than I do the madness of the smallest unnecessary interference with the social habits and religious opinions of the country. I would not touch one of them except in cases of extreme necessity.' But the simple introduction of peace, law, order, free competition for wealth and honour, with an education to match, will inevitably cause a social revolution. By merely suppressing violence and intestine war, you produce such a revolution in a country, which has for centuries been the theatre of disorder and war, as surely as by damming a river you produce a lake. You must look after the security of your dams under penalty of fearful disasters.

Hence the great problem of the English in India is to see that this inevitable revolution, at the head of which they have been placed, shall run in the proper channels and produce good results. What will be the ultimate result passes the wit of man to say. That India should reproduce Europe in religious morals and law seems highly improbable; but whatever changes take place will depend upon other causes than legislation. The law can only provide a convenient social framework. The utmost that we are entitled to say is that the maintenance of

peace, order, and the supremacy of a law, which leaves all religious inquiries to find their own level, and is founded upon temporal expediency, is an indisputable condition of the only kind of benefits which it is in our power to confer upon India.

The conclusion, then, follows that so much legislation is not only justifiable but necessary as will provide for the following objects:—the firm establishment of our power; the recognition and enforcement of the principles which it represents; and the vigorous administration of the government. Such legislation should be carried out, however much opposed either to European or to native principles. But all legislation, not required for these purposes, is mischievous and dangerous. The limits thus defined in general terms can only be precisely marked out by experience. But 'no law should be made till it is distinctly perceived and felt to be necessary. No one can admit more fully or feel more strongly than I do the evils and dangers of mere speculative legislation in India.'

Fitzjames proceeds to argue that these principles have in fact guided our Indian legislation. No Government was 'ever less justly chargeable with enacting laws merely for the sake of legislation.' The faults have arisen from defects of style and from the peculiar conditions of Indian administration. The unwritten law of India is mainly personal; and many difficulties have arisen from the mixture of English law with the Mohammedan and Hindoo laws and other native customs. All cases not otherwise provided for were to be decided by justice, equity, and good conscience. Much latitude of decision was thus left to the Indian judges upon matters not included in the written law. The practical result of thus 'throwing the reins on the neck of judges,' the first body of whom had no professional training, was to produce a

vague uncertain feeble system,' combining the defects of 'a weak grasp of principle with a great deal of occasional subservience to technicality.' English professional lawyers occasionally seem to acquire a specially vigorous grasp of principles, to which they have had to force their way through a mass of confused precedent and detail. But the 'unprofessional judge seldom gets beyond a certain number of illustrations and rules, more or less imperfectly understood.' Hence the special necessity in India of reducing the laws to the clearest and most explicit shape possible, or, in other words, for the codifying process in which he had played his part. Sir W. W. Hunter remarks in a note that the evils indicated here have been remedied to some extent, 'partly through the influence which his (Fitzjames's) views have exercised' in India, by a greater separation between the judicial and the executive branches of the service.

One of Fitzjames's most remarkable pieces of work is a 'Minute on the Administration of Justice in British India,' containing his remarks upon the subject mentioned by Sir W. W. Hunter. It was originally written in the summer of 1870, as a comment upon a large mass of opinions obtained from the local governments. It was revised in 1871, and published[1] just before he left India in 1872. The desirability of separating the judicial from the executive functions of the civilians had been long under discussion, and very various opinions had been held. In this minute Fitzjames summarises these, and gives his own view of the points on which he considered himself able to form an opinion. Many of the questions raised could only be answered to any purpose by men who had had long practical experience of administration. Fitzjames,

[1] In *Selections from the Records of the Government of India*, No. lxxxix., published by authority. Calcutta, 1872.

however, gives a careful account of the actual systems of the various provinces: discusses how far it is possible or desirable to separate the functions; whether a 'special judicial branch of the civil service' should be created; whether any modification would be desirable in the systems of civil or criminal procedure; and what practical suggestions should be followed, having regard to economy and to an increased employment of natives. I cannot even attempt to describe his arguments. I will only say that the minute appears to me to be a very remarkable production, not only as indicating the amount of labour bestowed, amid so many other occupations, upon the important questions discussed; but as one of his best performances as a very clear and terse account of a complicated system with a brief but exceedingly vigorous exposition of what he thought should be the governing principles of any reforms. He held, I may say, in a general way that there were some evils which required a remedy; especially those resulting from the frequency of appeals in the Indian system and the elaborate supervision of the magistrates by the High Courts. He recognises imperfections inherent and excusable in the attempt to administer justice to so vast a population by a small body of foreigners with very imperfect legal training; though he shows his usual admiration for the general results of British government, and thinks that the efficiency of the service may be secured by moderate reforms. Incidentally he goes over many of the points already noticed as touched in his speeches. I have, however, said as much as is desirable in regard to his general principles as expounded in the minute and in the 'Life of Lord Mayo.' Every one of the legislative measures in which he was concerned might be regarded as an illustration of one or more of these propositions. To me it seems that they represent at least a

definite policy, worthy of his common sense and general vigour of mind. A generalisation from these principles came to constitute his political creed in later years.

IV. LAST MONTHS IN INDIA

I must now speak of an event which made a very strong impression upon him. He concludes the chapter from which I have been quoting by declaring that of the many public men whom he had met in England and India, there was none to whom he 'felt disposed to give such heartfelt affection and honour' as to Lord Mayo. Lord Mayo, he says, though occupied in many other ways, had shown the 'deepest personal interest' in the work of the legislative department, and, when difficulties arose, had given to it the warmest, most ardent, and most effective support. It was chiefly due to Lord Mayo that the Government was able to pass the important acts of the beginning of 1872, especially the three great measures: the 'Civil Procedure Code,' the 'Contract Act,' and the 'Evidence Code.' I hope, says Fitzjames to Sir W. W. Hunter, that you will be able to make people understand 'how wise and honest and brave he was, and what freshness, vigour, and flexibility of mind he brought to bear upon a vast number of new and difficult subjects.' On January 24, 1870, Lord Mayo left Calcutta in H.M.S. 'Glasgow' to visit, among other places, the convict settlement at the Andaman Islands. He landed there on February 8, and while getting into his boat to return was murdered by a convict. The body was brought back to Calcutta on February 19, where it lay in state for two days at Government House, before being sent for burial to his native country. In one of his last letters to his mother, Fitzjames gives an account of the ceremonies at

Calcutta, which incidentally illustrates, I think, more forcibly than anything else, the impression produced upon him by India generally. I shall therefore give most of it, omitting a few comparatively irrelevant details. I will only observe that nobody had less taste for public performances of this kind in general—a fact which shows the strength of his feelings on this particular occasion.

'I never expected,' he writes (February 23, 1872), 'to be impressed by a mere ceremonial; but there were some things almost oppressive from their reality and solemnity. . . . The coffin was brought up on a gun-carriage. It was of enormous size and weight, (near two tons, I believe). The gun-carriage, drawn by twelve artillery horses, made a strangely impressive hearse. It looked so solid, so businesslike, so simple, and so free from all the plumes and staves and rubbish of undertakers. About thirty picked sailors from the "Daphne" and "Glasgow" walked behind and by the side; all dressed in clean white trousers and jerseys, and looking like giants, as indeed they were. They were intensely fond of Lord Mayo, who had won their hearts by the interest he took in them and in the little things they got up to amuse him. . . . He passed the last evening of his life sitting with Lady Mayo on the bridge of the "Glasgow," and laughing at their entertainment with the greatest cordiality. They wanted to be allowed to carry the coffin on their own shoulders; they said they were ready and willing to do it, and I believe they would have been able, ready, and willing to do anything that strength and skill and pluck could do. Behind them walked the procession, which was nearly three-quarters of a mile long, and contained every Englishman of any importance in Calcutta and a considerable number of natives. The whole road was lined with troops on both sides: but they stood at intervals of

several yards, and there was an immense crowd close behind and, in some places in between them. . . . If there had been any other fanatics in the crowd, there was nothing to prevent them from making a rush and giving a stab. . . . If there had been any attempt of the kind, I cannot say what might not have happened. People were in such an excited and half-electric state that there might have been a general riot, which would soon have become very like a massacre. One man told me that on his way home, he felt possessed by such fury against anyone who might be connected with the murder, that he walked with a kind of charge through a group of people, who looked as if they enjoyed "the show," and gave a shove to a big Mohammedan who looked insolent, at which, he said, "the man went down like a bag of feathers." I saw some suspicious-looking fellows grinning and sneering and showing their teeth myself, and I felt as if I could have killed them. No one who has not felt it can imagine how we all feel out here in regard to such matters. When Lord Mayo was stabbed, I think every man in the country felt as if he had been more or less stabbed himself.

'The procession went on with the most overwhelming solemnity (nothing short of these words can describe it), till we got to Government House. There was a dead silence nearly all the way; the natives standing or squatting in their apathetic way, and the Europeans as grim as death. All that was to be heard was the rattle of the gun-carriage, and the tramping of the horses, and the minute-guns from the fort and ships. The housetops, the windows, the fort were all crowded with people, but all as still as death. I think the ships looked as sad as anything. There were two miles of noble ships in the Hooghly. Their flags were all flying half-mast high, and they had all

"tossed their yards."' (He draws a rough diagram to explain the phrase). 'The yards are all in disorder, and the effect is forlorn and dishevelled to a degree you would not imagine. When we got to Government House, the coffin had to be lifted off the gun-carriage and pulled up a long flight of wide stone steps. . . . The sailors and a few artillerymen did it all in perfect silence, and with an amount of strength that looked almost marvellous.' The coffin was placed on a truck, to which the sailors harnessed themselves, and dragged it up an inclined plane (formed over the steps) with no apparent effort in spite of the enormous weight. It was taken along a suite of rooms, 'hung with black, and lighted with a curious simplicity and grandeur.' Here, again, the coffin had to be lifted, and 'it was most striking to see the absolute silence with which the men moved the monstrous weight at a sign from the captain's hand.' The only sound was when a spar snapped in the hands of a 'giant of a fellow, who was lifting with it. There was a respectful delicacy in every motion of these men which combined beautifully with their immense, quiet, controlled strength, and impressed me very much. After a few prayers we left.'

On Wednesday, the 21st, the coffin was again removed to the ship. The imprudence of the former procession had struck everyone. The streets were cleared and no one admitted to the jetty except the procession. 'You cannot imagine the awful solemnity which all this precaution gave the whole thing. It was like marching through a city half-dead and half-besieged.' Nothing was to be seen but troops; and, 'when we got into Dalhousie Square, there was a battery of artillery firing minute-guns, and drawn up on the road just as if they were going to fight. Two or three bands played the Dead March the whole way, till I felt as if it would never get out of my

ears. At the end of the jetty lay the "Daphne." . . . The sailors, with infinite delicacy and quiet, draped the coffin carefully with its flags . . . and it was raised and lowered by a steam-crane, which, somehow or other, they managed to work without any sound at all. When the ship steamed off down the river, and the minute-guns stopped, and I drove home with Henry Cunningham, I really felt as I suppose people feel when an operation is over. There was a stern look of reality about the whole affair, quite unlike what one has seen elsewhere. Troops and cannon and gun-carriages seem out of place in England, . . . but it is a very different matter here, where everything rests upon military force. The guns and the troops are not only the outward and visible marks of power, but they are the power itself to a great extent, and it is very impressive to see them.

'It gives a sort of relief to one,' he adds, 'that after all Lord Mayo was, in a sense, going home: that he (so far as one can speak of his dead body) was leaving this country with all its various miseries, to return to his own native place. If one is to have fancies on such a matter, it is pleasant to think that he is not to lie here in a country where we can govern and where we can work and make money and lead laborious lives; but for which no Englishman ever did, or ever will, or can feel one tender or genial feeling.[1] The work that is done here is great and wonderful; but the country is hateful.'

One singular incident was connected with this event. The murderer had been tried on the spot and sentenced to

[1] I do not feel that it would be right to omit this remark, although I am certain that, taken by itself, it would convey a totally inaccurate impression of my brother's sentiments about India. I have, I hope, said enough to indicate his sympathetic interest in Indian matters and the work of Indian officials. I must trust my readers to understand that the phrase expresses a mood of intense excitement and must be taken only as indicating the strength of the passing emotion.

death. The sentence had to be confirmed by the High Court at Calcutta. It was there discovered that the judge had by some mistake recorded that the European witnesses had 'affirmed' according to the form used for native religions, instead of being sworn according to the Christian formula. Fitzjames was startled to hear of this intrusion of technicality upon such an occasion; and held, I think, that in case of need, the Government of India should manage to cut the knot. Ultimately, however, some of the witnesses who were at Calcutta made affidavits to the effect that they had really been sworn, and the sentence was confirmed and executed. Otherwise, said Fitzjames in one of his last Indian speeches (upon the Oaths and Declaration Act) a grievous crime might have escaped punishment, because five English gentlemen had made statements 'in the presence of Almighty God,' instead of kissing the Bible and saying 'So help me God.'

I must mention one other incident which occurred at the end of Fitzjames's stay in India. One Ram Singh was the spiritual and political chief of a sect called the Kookas. His disciples showed their zeal by murdering butchers as a protest against cow-killing. They were animated by prophecies of a coming kingdom of heaven, broke into rioting and were suppressed, and, as the Indian Government held, punished with an excess of severity. Although Fitzjames was not officially responsible in this business, he was consulted on the occasion; and his opinions are represented by an official despatch. I need only say that, as in the case of Governor Eyre, he insisted that, while the most energetic measures were allowable to suppress actual resistance, this was no excuse for excessive punishment after the danger was over. The ordinary law should then be allowed to take its course. Meanwhile, Ram Singh was shown to be more or less implicated in

the disorders and was deported to Burmah. Fitzjames was greatly impressed by the analogy between English rulers in India and Roman governors in Syria some eighteen centuries ago, when religious sects were suspected of political designs. To this I shall refer presently.

Fitzjames attended the Legislative Council for the last time on April 17, 1872. He left Calcutta the next day on his return to England. He had thus been in office for only half the usual period of five years. His reasons for thus cutting short his time were simple. He felt very strongly that he was exacting a sacrifice on the part of his wife and his family which could only be justified by a very distinct advantage. The expenses were more than he had anticipated, and he saw at an early period that he would be in any case compelled to return to his profession. Gaps at the bar are soon filled up. The more prolonged his absence, the greater would be the difficulty of regaining the position which he had slowly reached. I have some reason to think that the authorities at the India Office were not altogether pleased at what they considered to be a premature relinquishment of his post. He could, however, reply that if he had been only half the usual time in India, he had done fully twice the average amount of work. He left India without regrets for the country itself; for to him the climate and surroundings of English life seemed to be perfection. But he left with a profound impression of the greatness of the work done by Englishmen in India; and with a warm admiration for the system of government, which he was eager to impart to his countrymen at home. How he endeavoured to utter himself upon that and kindred subjects shall be told in the next chapter.

CHAPTER V.

LAST YEARS AT THE BAR

I. FIRST OCCUPATIONS IN ENGLAND

FITZJAMES had passed the winter of 1871–2 in Calcutta with Henry Cunningham; his wife having returned to England in November. He followed her in the spring, sailing from Bombay on April 22, 1872. To most people a voyage following two years and a half of unremitting labour would have been an occasion for a holiday. With him, however, to end one task was the same thing as to begin another, and he was taking up various bits of work before India was well out of sight. He had laid in a supply of literature suitable both for instruction and amusement. The day after leaving Bombay he got through the best part of a volume of Sainte-Beuve. He had also brought a 'Faust' and Auerbach's 'Auf der Höhe,' as he was anxious to improve himself in German, and he filled up odd spaces of time with the help of an Italian grammar. He was writing long letters to friends in India, although letter-writing in the other direction would be a waste of time. With this provision for employment he found that the time which remained might be adequately filled by a return to his beloved journalism. He proposes at starting to write an article a day till he gets to Suez. He was a little put out for the first twenty-four hours because in the place which he had selected for writing his iron chair was too near the ship's compasses. He got a

safe position assigned to him before long and immediately set to work. He takes his first text from the May meetings for an article which will give everybody some of his reflections upon missionaries in India. Our true position in India, he thinks, is that of teachers, if only we knew what to teach. Hitherto we have not got beyond an emphatic assertion of the necessity of law and order. He writes his article while the decks are being washed, and afterwards writes a 'bit of a letter,' takes his German and Italian lessons, and then turns to his travelling library. This included Mill's 'Utilitarianism' and 'Liberty'; which presently provide him with material not only for reflection, but for exposition. On April 27 he reports that he has been 'firing broadsides into John Mill for about three hours.' He is a little distracted by the heat, and by talks with some of his fellow-travellers; but as he goes up the Red Sea he is again assailing Mill. It has now occurred to him that the criticisms may be formed into a series of letters to the 'Pall Mall Gazette,' which will enable him to express a good many of his favourite doctrines. 'It is curious,' he says, 'that after being, so to speak, a devoted disciple and partisan (of Mill) up to a certain point I should have found it impossible to go on with him. His politics and morals are not mine at all, though I believe in and admire his logic and his general notions of philosophy.'

He reached Suez on May 5, and on the way home resolved at last to knock off work and have a little time for reflection on the past and the future. India, he says, has been 'a sort of second University course' to him. 'There is hardly any subject on which it has not given me a whole crowd of new ideas, which I hope to put into shape,' and communicate to the world. On May 12 he reached Paris, where he met his wife; and on the 14th was again in

England, rejoicing in a cordial reception from his family and his old friends. The same evening he sees his cousin Mrs. Russell Gurney and her husband; and his uncle and aunt, John and Emelia Venn. Froude met him next day in the pleasantest way, and Maine and he, as he reports, were 'like two schoolboys.' On the 15th he went to his chambers and called upon Greenwood at the 'Pall Mall Gazette' office. He had written an article on the way from Paris which duly appeared in next day's paper. Not long after his return he attended a dinner of his old Cambridge club, with Maine in the chair. In proposing Maine's health he suggested that the legislation passed in India during the rule of his friend and himself should henceforth be called the 'Acts of the Apostles.'

One of the greatest pleasures upon reaching home was to find that his mother showed less marks of increasing infirmity than he had expected from the accounts in letters. She was still in full possession of her intellectual powers, and though less able than of old to move about, was fully capable of appreciating the delight of welcoming back the son who had filled so much of her thoughts. I may here note that Fitzjames's happiness in reviving the old bonds of filial affection was before long to be clouded. His uncle, Henry Venn, died on January 13, 1873, and he writes on the 30th: 'somehow his life was so bold, so complete, and so successful, that I did not feel the least as if his death was a thing to be sad about,' sad as he confesses it to be in general to see the passing away of the older generation. 'My dear mother,' he adds, 'is getting visibly weaker, and it cannot now be a very long time before she goes too. It is a thought which makes me feel very sad at times, but no one ever had either a happier life or a more cheerful and gallant spirit. She does not care to have us to dinner now; but we all see

her continually; I go perhaps every other day, and Mary nearly every day.'

His mother was to survive two years longer. Her strong constitution and the loving care of the daughter who lived with her supported her beyond the anticipation of her doctors. There are constant references to her state in my brother's letters. The old serenity remained unchanged to the last. She suffered no pain and was never made querulous by her infirmities. Slowly and gradually she seemed to pass into a world of dreams as the decay of her physical powers made the actual world more indistinct and shadowy. The only real subject for regret was the strain imposed upon the daughter who was tenderly nursing her, and doing what could be done to soothe her passage through the last troubles she was to suffer. It was as impossible to wish that things should be otherwise as not to feel the profound pathos of the gentle close to long years of a most gentle and beautiful life. Fitzjames felt what such a son should feel for such a mother. It would be idle to try to put into explicit words that under-current of melancholy and not the less elevating thought which saddened and softened the minds of all her children. Her children must be taken to include some who were children not by blood but by reverent affection. She died peacefully and painlessly on February 27, 1875. She was buried by the side of her husband and of two little grandchildren, Fitzjames's infant daughter and son, who had died before her.

I now turn to the work in which Fitzjames was absorbed almost immediately after his return to England. He had again to take up his profession. He was full of accumulated reflections made in India, which he had not been able to discharge through the accustomed channel of journalism during his tenure of office; and besides this

he entertained hopes, rather than any confident belief, that he would be able to induce English statesmen to carry on in their own country the work of codification, upon which he had been so energetically labouring in India. Before his departure he had already been well known to many distinguished contemporaries. But he came home with a decidedly higher reputation. In the natural course of things, many of his contemporaries had advanced in their different careers, and were becoming arbiters and distributors of reputation. His Indian career had demonstrated his possession of remarkable energy, capable of being applied to higher functions than the composition of countless leading articles. He was henceforward one of the circle—not distinguished by any definite label but yet recognised among each other by a spontaneous freemasonry—which forms the higher intellectual stratum of London society; and is recruited from all who have made a mark in any department of serious work. He was well known, of course, to the leaders of the legal profession; and to many members of Government and to rising members of Parliament, where his old rival Sir W. Harcourt was now coming to the front. He knew the chief literary celebrities, and was especially intimate with Carlyle and Froude, whom he often joined in Sunday 'constitutionals.' His position was recognised by the pleasant compliment of an election to the 'Athenæum' 'under Rule II.,' which took place at the first election after his return (1873). He had just before (November 1872) been appointed counsel to the University of Cambridge. Before long he had resumed his place at the bar. His first appearance was at the Old Bailey in June 1872, where he 'prosecuted a couple of rogues for Government.' He had not been there since he had held his first brief at the same place eighteen years

before, and spent his guinea upon the purchase of a wedding ring. He was amused to find himself after his dignified position in India regarded as a rather 'promising young man' who might in time be capable of managing an important case. The judge, he says, 'snubbed' him for some supposed irregularity in his examination of a witness, and did not betray the slightest consciousness that the offender had just composed a code of evidence for an empire. He went on circuit in July, and at Warwick found himself in his old lodgings, writing with his old pen, holding almost the same brief as he had held three years before, before the same judge, listening to the same church bells, and taking the walk to Kenilworth Castle which he had taken with Grant Duff in 1854. Although the circuit appears to have been unproductive, business looked 'pretty smiling in various directions.' John Duke Coleridge, afterwards Lord Chief Justice, was at this time Attorney-General. Fitzjames differed from him both in opinions and temperament, and could not refrain from an occasional smile at the trick of rather ostentatious self-depreciation which Coleridge seemed to have inherited from his great-uncle. There was, however, a really friendly feeling between them both now and afterwards; and Coleridge was at this time very serviceable. He is 'behaving like a good fellow,' reports Fitzjames July 5, and is 'sending Government briefs which pay very well.' By the end of the year Fitzjames reports 'a very fair sprinkling of good business.' All his old clients have come back, and some new ones have presented themselves. There were even before this time some rumours of a possible elevation to the bench; but apparently without much solid foundation. Meanwhile, he was also looking forward to employment in the direction of codification. He had offered, when leaving India, to draw another codifying bill (upon

'Torts') for his successor Hobhouse. This apparently came to nothing; but there were chances at home. 'I have considerable hopes,' he says (June 19, 1872), 'of getting set to work again after the manner of Simla or Calcutta.' There is work enough to be done in England to last for many lives; and the Government may perhaps take his advice as to the proper mode of putting it in hand. He was soon actually at work upon two bills, which gave him both labour and worry before he had done with them. One of these was a bill upon homicide, which he undertook in combination with Russell Gurney, then recorder of London. The desirability of such a bill had been suggested to Gurney by John Bright, in consequence of a recent commission upon Capital Punishment. Gurney began to prepare the work, but was glad to accept the help of Fitzjames, whose labours had made him so familiar with the subject. Substantially he had to adapt part of the Penal Code, which he must have known by heart, and he finished the work rapidly. He sent a copy of the bill to Henry Cunningham on August 15, 1872, when it had already been introduced into Parliament by R. Gurney and read a first time. He sees, however, no chance of getting it seriously discussed for the present. One reason is suggested in the same letter. England is a 'centre of indifference' between the two poles, India and the United States. At each pole you get a system vigorously administered and carried to logical results. 'In the centre you get the queerest conceivable hubblebubble, half energy and half impotence, and all scepticism in a great variety of forms.' The homicide bill was delayed by Russell Gurney's departure for America on an important mission in the following winter, but was not yet dead. One absurd little anecdote in regard to it belongs to this time. Fitzjames had gone to stay with Froude in a remote corner of

Wales; and wishing to refer to the draft, telegraphed to the Recorder of London: 'Send Homicide Bill.' The official to whom this message had to be sent at some distance from the house declined to receive it. If not a coarse practical joke, he thought it was a request to forward into that peaceful region a wretch whose nickname was too clearly significant of his bloodthirsty propensities.

Fitzjames mentions in the same letter to Cunningham that he has just finished the 'introduction' to his Indian Evidence Act. This subject brought him further occupation. He had more or less succeeded in making a convert of Coleridge. 'If this business with Coleridge turns out right,' he says (October 2), 'I shall have come home in the very nick of time, for there is obviously going to be a chance in the way of codification which there has not been these forty years, and which may never occur again.' Had he remained in India, he might have found the new viceroy less favourable to his schemes than Lord Mayo had been, and would have at any rate missed the chance of impressing the English Government at the right time. On November 29 he writes again to Cunningham, and expresses his disgust at English methods of dealing with legislation. He admits that 'too much association with old Carlyle, with whom I walk most Sundays,' may have made him 'increasingly gloomy.' But 'everything is so loose, so jarring, there is such an utter want of organisation and government in everything, that I feel sure we shall have a great smash some day.' A distinguished official has told him—and he fully believes it—that the Admiralty and the War Office would break down under a week's hard pressure. He observes in one article of the time that his father had made the same prophecy before 1847. He often quotes his father for the saying, 'I am a

ministerialist.' Men in office generally try to do their best, whatever their party. But men in opposition aim chiefly at thwarting all action, good or bad, and a parliamentary system gives the advantage to obstruction. Part of his vexation, he admits, is due to his disgust at the treatment of the codification question. Coleridge, it appears, had proposed to him 'months ago' that he should be employed in preparing an Evidence Bill. Difficulties had arisen with Lowe, the Chancellor of the Exchequer, as to the proper fee. Fitzjames was only anxious now to get the thing definitively settled on any terms and put down in black and white. The Government might go out at any moment, and without some agreement he would be left in the lurch. It was 'excessively mortifying, . . . and showed what a ramshackle concern our whole system' was. Definite instructions, however, to prepare the bill were soon afterwards given. On December 20 he writes that the English Evidence Bill is getting on famously. He hopes to have it all ready before Parliament meets, and it may probably be read a second time, though hardly passed this year. It was in fact finished, as one of his letters shows, by February 7, 1873.

II. 'LIBERTY, EQUALITY, FRATERNITY'

Meanwhile, however, he had been putting much energy into another task. He had for some time delivered his tale of articles to the 'Pall Mall Gazette' as of old. He was soon to become tired of anonymous journalism; but he now produced a kind of general declaration of principles which, though the authorship was no secret and was soon openly acknowledged, appeared in the old form, and, as it turned out, was his last work of importance in that department. It was in some ways the most characteristic

of all his writings. He put together and passed through the 'Pall Mall Gazette' during the last months of 1872 and January 1873 the series of articles already begun during his voyage. They were collected and published with his name in the following spring as 'Liberty, Equality, Fraternity.' I confess that I wondered a little at the time that the editor of a newspaper should be willing to fill his columns with so elaborate a discourse upon first principles; and I imagine that editors of the present day would be still more determined to think twice before they allowed such latitude even to the most favoured contributor. I do not doubt, however, that Mr. Greenwood judged rightly. The letters were written with as much force and spirit as anything that Fitzjames ever produced. I cannot say how they affected the paper, but the blows told as such things tell. They roused the anger of some, the sympathy of others, and the admiration of all who liked to see hard hitting on any side of a great question. The letters formed a kind of 'Apologia' or a manifesto—the expression, as he frequently said, of his very deepest convictions. I shall therefore dwell upon them at some length, because he had never again the opportunity of stating his doctrines so completely. Those doctrines are far from popular, nor do I personally agree with them. They are, however, characteristic not merely of Fitzjames himself, but of some of the contemporary phases of opinion. I shall therefore say something of their relation to other speculations; although for my purpose the primary interest is the implied autobiography.

The book was perhaps a little injured by the conditions under which it was published. A series of letters in a newspaper, even though, as in this case, thought out some time beforehand, does not lend itself easily to the development of a systematic piece of reasoning. The writer is

tempted to emphasise unduly the parts of his argument which are congenial to the journalistic mode of treatment. It is hard to break up an argument into fragments, intended for separate appearance, without somewhat dislocating the general logical framework. The difficulty was increased by the form of the argument. In controverting another man's book, you have to follow the order of his ideas instead of that in which your own are most easily expounded. Fitzjames, indeed, gives a reason for this course. He accepts Mill's 'Liberty' as the best exposition of the popular view. Acknowledging his great indebtedness to Mill, he observes that it is necessary to take some definite statement for a starting point; and that it is 'natural to take the ablest, the most reasonable, and the clearest.' Mill, too, he says, is the only living author with whom he 'agrees sufficiently to argue with him profitably.' He holds that the doctrines of Mill's later books were really inconsistent with the doctrines of the 'Logic' and 'Political Economy.' He is therefore virtually appealing from the new Utilitarians to the old. 'I am falling foul,' he says in a letter, 'of John Mill in his modern and more humane mood—or, rather, I should say, in his sentimental mood—which always makes me feel that he is a deserter from the proper principles of rigidity and ferocity in which he was brought up.' Fitzjames was thus writing as an orthodox adherent of the earlier school. He had sat at the feet of Bentham and Austin, and had found the most congenial philosophy in Hobbes. And yet his utilitarianism was mingled with another strain; and one difficulty for his readers is precisely that his attack seems to combine two lines of argument not obviously harmonious. Still, I think that his main position is abundantly clear.

Fitzjames—as all that I have written may go to prove

—was at once a Puritan and a Utilitarian. His strongest sympathies and antipathies were those which had grown up in the atmosphere of the old evangelical circle. On this side, too, he had many sympathies with the teaching of Carlyle, himself a spiritual descendant of the old Covenanters. But his intellect, as I have also remarked, unlike Carlyle's, was of the thoroughly utilitarian type. Respect for hard fact, contempt for the mystical and the dreamy; resolute defiance of the *à priori* school who propose to override experience by calling their prejudices intuitions, were the qualities of mind which led him to sympathise so unreservedly with Bentham's legislative theories and with Mill's 'Logic.' Let us, before all things, be sure that our feet are planted on the solid earth and our reason guided by verifiable experience. All his studies, his legal speculations, and his application of them to practice, had strengthened and confirmed these tendencies. How were they to be combined with his earlier prepossessions?

The alliance of Puritan with utilitarian is not in itself strange or unusual. Dissenters and freethinkers have found themselves side by side in many struggles. They were allied in the attack upon slavery, in the advocacy of educational reforms, and in many philanthropic movements of the early part of this century. James Mill and Francis Place, for example, were regarded as atheists, and were yet adopted as close philanthropic allies by Zachary Macaulay and by the quaker William Allen. A common antipathy to sacerdotalism brought the two parties together in some directions, and the Protestant theory of the right of private judgment was in substance a narrower version of the rationalist demand for freedom of thought. Protestantism in one aspect is simply rationalism still running about with the shell on its

head. This gives no doubt one secret of the decay of the evangelical party. The Protestant demand for a rational basis of faith widened among men of any intellectual force into an inquiry about the authority of the Bible or of Christianity. Fitzjames had moved, reluctantly and almost in spite of himself, very far from the creed of his fathers. He could not take things for granted or suppress doubts by ingenious subterfuges. And yet, he was so thoroughly imbued with the old spirit that he could not go over completely to its antagonists. To destroy the old faith was still for him to destroy the great impulse to a noble life. He held in some shape to the value of his creed, even though he felt logically bound to introduce a 'perhaps.'

This, however, hardly gives the key to his first difference with the utilitarians, though it greatly affects his conclusions. He called himself, as I have said, a Liberal; but there were, according to him, two classes of Liberals, the intellectual Liberals, whom he identified with the old utilitarians, and the Liberals who are generally described as the Manchester school. Which of those was to be the school of the future, and which represented the true utilitarian tradition? Here I must just notice a fact which is not always recognised. The utilitarians are identified by most people with the (so-called) Manchester doctrines. They are regarded as advocates of individualism and the *laissez-faire* or, as I should prefer to call it, the let-alone principle. There was no doubt a close connection, speaking historically; but a qualification must be made in a logical sense, which is very important for my purpose. The tendency which Fitzjames attacked as especially identified with Mill's teaching—the tendency, namely, to restrict the legitimate sphere of government—is far from being specially utilitarian. It belonged more properly to the adherents of

the 'rights of man,' or the believers in abstract reason. It is to be found in Price and Paine, and in the French declaration of the rights of man; and Mr. Herbert Spencer, its chief advocate (in a new form) at the present day remarks himself that he was partly anticipated by Kant. Bentham expressly repudiated this view in his vigorous attack upon the 'anarchical fallacies' embodied in the French declaration. In certain ways, moreover, Bentham and his disciples were in favour of a very vigorous Government action. Bentham invented his Panopticon as a machine for 'grinding rogues honest,' and proposed to pass paupers in general through the same mill. His constitutional code supposes a sort of omnipresent system of government, and suggests a national system of education and even a national church—with a very diluted creed. As thorough-going empiricists, the utilitarians were bound to hold, and did, in fact, generally declare themselves to hold, not that Government interference was wrong in general, but simply that there was no general principle upon the subject. Each particular case must be judged by its own merits.

Historically speaking, the case was different. The political economy of Ricardo and the Mills was undoubtedly what is now called thoroughly 'individualistic.' Its adherents looked with suspicion at everything savouring of Government action. This is in part one illustration of the general truth that philosophies of all kinds are much less the real source of principles than the theories evoked to justify principles. Their course is determined not by pure logic alone, but by the accidents of contemporary politics. The revolutionary movement meant that governments in general were, for the time, the natural enemies of 'reason.' Philosophers who upon any ground sympathised with the movement took for their

watchword 'liberty,' which, understood absolutely, is the antithesis to all authority. They then sought to deduce the doctrine of liberty from their own philosophy, whatever that might be. The *à priori* school discovered that kings and priests and nobles interfered with a supposed 'order of nature,' or with the abstract 'rights of man.' The utilitarian's argument was that all government implies coercion; that coercion implies pain; and therefore that all government implies an evil which ought to be minimised. They admitted that, though 'minimised,' it should not be annihilated. Bentham had protested very forcibly that the 'rights of man' doctrine meant anarchy logically, and asserted that government was necessary, although a necessary evil. But the general tendency of his followers was to lay more stress upon the evil than upon the necessity. The doctrine was expounded with remarkable literary power by Buckle,[1] who saw in all history a conflict between protection and authority on the one hand and liberty and scepticism on the other.

J. S. Mill had begun as an unflinching advocate of the stern old utilitarianism of his father and Ricardo. He had become, as Fitzjames observes, 'humane' or 'sentimental' in later years. He tried, as his critics observe, to soften the old economic doctrines and showed a certain leaning to socialism. In regard to this part of his teaching, in which Fitzjames took little interest, I shall only notice that, whatever his concessions, he was still in principle an 'individualist.' He maintained against the Socialists the advantages of competition; and though his theory of the 'unearned increment' looks towards the socialist view of nationalisation of the land, he seems to have been always in favour of peasant proprietorship, and of co-operation as distinguished from State socialism. In-

[1] The first volume of his *Civilization in Europe* appeared in 1857.

dividualism, in fact, in one of its senses, for like other popular phrases it tends to gather various shades of meaning, was really the characteristic of the utilitarian school. Thus in philosophy they were 'nominalists,' believing that the ultimate realities are separate things, and that abstract words are mere signs calling up arbitrary groups of things. Politically, they are inclined to regard society as an 'aggregate,' instead of an 'organism.' The ultimate units are the individual men, and a nation or a church a mere name for a multitude combined by some external pressure into a collective mass of separate atoms.[1] This is the foundation of Mill's political theories, and explains the real congeniality of the let-alone doctrines to his philosophy. It gives, too, the key-note of the book upon 'Liberty,' which Fitzjames took for his point of assault. Mill had been profoundly impressed by Tocqueville, and, indeed, by an order of reflections common to many intelligent observers. What are to be the relations between democracy and intellectual culture? Many distinguished writers have expressed their forebodings as to the future. Society is in danger of being vulgarised. We are to be ground down to uniform and insignificant atoms by the social mill. The utilitarians had helped the lower classes to wrest the scourge from the hands of their oppressors. Now the oppressed had the scourge in their own hands; how would they apply it? Coercion looked very ugly in the hands of a small privileged class; but when coercion could be applied by the masses would they see the ugliness of it? Would they not use the same machinery in order to crush the

[1] Mill elaborately argues that the social sciences are possible precisely because the properties of the society are simply the sum of the properties of the individuals of which it is composed. His view of the importance of this theory is given in his *Autobiography* (first edition), p. 260. And see especially his *Logic*, Bk. vi. chap. vii.

rich and the exalted, and take in the next place to crushing each other? Shall we not have a dead level of commonplace and suffer, to use the popular phrase, from a 'tyranny of the majority,' more universal and more degrading than the old tyranny of the minority? This was the danger upon which Mill dwelt in his later works. In his 'Liberty' he suggests the remedy. It is nothing less than the recognition of a new moral principle. Mankind, he said, individually or collectively, are justified in interference with others only by the need of 'self-protection.' We may rightfully prevent a man from hurting his neighbour, but not from hurting himself. If we carefully observe this precaution the individual will have room to expand, and we shall cease to denounce all deviations from the common type.

Here Fitzjames was in partial sympathy with his antagonist. He reviewed 'Liberty' in the 'Saturday Review' upon its first appearance; and although making certain reservations, reviewed it with warm approbation. Mill and he were agreed upon one point. A great evil, perhaps the one great evil of the day, as Fitzjames constantly said, is the prevalence of a narrow and mean type of character; the decay of energy; the excessive devotion to a petty ideal of personal comfort; and the systematic attempt to turn our eyes away from the dark side of the world. A smug, placid, contemptible optimism is creeping like a blight over the face of society, and suppressing all the grander aspirations of more energetic times. But in proportion to Fitzjames's general agreement upon the nature of the evil was the vehemence of his dissent from the suggested remedy. He thought that, so far from meeting the evil, it tended directly to increase it. To diminish the strength of the social bond would be to enervate not to invigorate society. If Mill's principles could be adopted, everything

that has stimulated men to pursue great ends would lose its interest, and we should become a more contemptible set of creatures than we are already.

I have tried to show how these convictions had been strengthened by circumstances. Fitzjames's strong patriotic feeling, his pride in the British race and the British empire, generated a special antipathy to the school which, as he thought, took a purely commercial view of politics; which regarded the empire as a heavy burthen, because it did not pay its expenses, and which looked forward to a millennium of small shopkeepers bothered by no taxes or tariffs. During the 'Pall Mall Gazette' period he had seen such views spreading among the class newly entrusted with power. Statesmen, in spite of a few perfunctory attempts at better things, were mainly engaged in paltry intrigues, and in fishing for votes by flattering fools. The only question was whether the demagogues who were their own dupes were better or worse than the demagogues who knew themselves to be humbugs. Carlyle's denunciations of the imbecility of our system began to be more congenial to his temper, and encouraged him in his heresy. Carlyle's teachings were connected with erroneous theories indeed, and too little guided by practical experience. But the general temper which they showed, the contempt for slovenly, haphazard, hand-to-mouth modes of legislation, the love of vigorous administration on broad, intelligble principles, entirely expressed his own feeling. Finally, in India he had, as he thought, found his ideal realised. There, with whatever shortcomings, there was at least a strong Government; rulers who ruled; capable of doing business; of acting systematically upon their convictions; strenuously employed in working out an effective system; and not trammelled by trimming their sails to catch every temporary gust of sentiment in a half-educated community.

His book, he often said, was thus virtually a consideration of the commonplaces of British politics in the light of his Indian experience. He wished, he says in one of his letters, to write about India; but as soon as he began he felt that he would be challenged to give his views upon these preliminary problems: What do you think of liberty, of toleration, of ruling by military force, and so forth? He resolved, therefore, to answer these questions by themselves.

I must add that this feeling was coloured by Fitzjames's personal qualities. He could never, as I have pointed out, like Mill himself; he pronounced him to be 'cold as ice,' a mere 'walking book,' and a man whose reasoning powers were out of all proportion to his 'seeing powers.' If I were writing about Mill I should think it necessary to qualify this judgment of a man who might also be described as sensitive to excess, and who had an even feminine tenderness. But from Fitzjames's point of view the judgment was natural enough. The two men could never come into cordial relations, and the ultimate reason, I think, was what I should call Mill's want of virility. He might be called 'cold,' not as wanting in tenderness or enthusiasm, but as representing a kind of philosophical asceticism. Whether from his early education, his recluse life, or his innate temperament, half the feelings which moved mankind seemed to him simply coarse and brutal. They were altogether detestable—not the perversions which, after all, might show a masculine and powerful nature. Mill's view, for example, seemed to be that all the differences between the sexes were accidental, and that women could be turned into men by trifling changes in the law. To a man of ordinary flesh and blood, who had grounded his opinions, not upon books, but upon actual experience of life, such doctrines appear to be not only

erroneous, but indicative of a hopeless thinness of character. And so, again, Fitzjames absolutely refused to test the value of the great patriotic passions which are the mainsprings of history by the mere calculus of abstract concepts which satisfied Mill. Fitzjames, like Henry VIII., 'loved a man,' and the man of Mill's speculations seemed to be a colourless, flaccid creature, who required, before all things, to have some red blood infused into his veins.

Utilitarianism of the pedantic kind—the utilitarianism which substitutes mere lay figures for men and women—or the utilitarianism which refuses to estimate anything that cannot be entered in a ledger, was thus altogether abhorrent to Fitzjames. And yet he was, in his way, a utilitarian in principle; and his reply to Mill must be given in terms of utilitarianism. To do that, it was only necessary to revert to the original principles of the sect, and to study Austin and Bentham with a proper infusion of Hobbes. Then it would be possible to construct a creed which, whatever else might be said of it, was not wanting in vigour or in danger of substituting abstractions for concrete realities. I shall try to indicate the leading points of this doctrine without following the order partly imposed upon Fitzjames by his controversial requirements. Nor shall I inquire into a question not always quite clear, namely, whether his interpretation of Mill's principles was altogether correct.

One fundamental ground is common to Fitzjames and his antagonist. It is assumed in Austin's analysis of 'law,' which is accepted by both.[1] Law properly means a command enforced by a 'sanction.' The command is given by a 'sovereign,' who has power to reward or punish, and is made effectual by annexing consequences, painful

[1] *Liberty, Equality, Fraternity*, p. 212. (My references are to the second edition.)

or pleasurable, to given lines of conduct. The law says, 'Thou shalt not commit murder'; and 'shalt not' means 'if you commit murder you shall be hanged.' Nothing can be simpler or more obviously in accordance with common sense. Abolish the gaoler and the hangman and your criminal law becomes empty words. Moreover, the congeniality of this statement to the individualist point of view is obvious. Consider men as a multitude of independent units, and the problem occurs, How can they be bound into wholes? What must be the principle of cohesion? Obviously some motive must be supplied which will operate upon all men alike. Practically that means a threat in the last resort of physical punishment. The bond, then, which keeps us together in any tolerable order is ultimately the fear of force. Resist, and you will be crushed. The existence, therefore, of such a sanction is essential to every society; or, as it may be otherwise phrased, society depends upon coercion.

This, moreover, applies in all spheres of action. Morality and religion 'are and always must be essentially coercive systems.'[1] They restrain passion and restrain it by appealing to men's hopes and fears—chiefly to their fears. For one man restrained by the fear of the criminal law, a vast number are restrained by the 'fear of the disapprobation of their neighbours, which is the moral sanction, or by the fear of punishment in a future state of existence, which is the religious sanction, or by the fear of their own disapprobation, which may be called the conscientious sanction, and may be regarded as a compound case of the other 'two.'[2] An objection, therefore, to coercion would be an objection to all the bonds which

[1] P. 17.

[2] P. 10. This is almost literally from Bentham, who gives several similar classifications of 'sanctions.'

make association possible; it would dissolve equally states, churches, and families, and make even the peaceful intercourse of individuals impossible. In point of fact, coercion has built up all the great churches and nations. Religions have spread partly by military power, partly by 'threats as to a future state,' [1] and always by the conquest of a small number of ardent believers over the indifferent mass. Men's lives are regulated by customs as streams are guided by dams and embankments. The customs like the dams are essentially restraints, and moreover restraints imposed by a small numerical minority, though they ultimately become so familiar to the majority that the restraint is not felt. All nations have been built up by war, that is, by coercion in its sternest form. The American civil war was the last and most striking example. It could not ultimately be settled by conveyancing subtleties about the interpretation of clauses in the Constitution, but by the strong hand and the most energetic faith.[2] War has determined whether nations are to be and what they are to be. It decides what men shall believe and in what mould their religion, laws, morals, and the whole tone of their lives shall be cast.[3]

Nor does coercion disappear with the growth of civilisation. It is not abolished but transformed. Lincoln and Moltke commanded a force which would have crushed Charlemagne and his paladins and peers like so many eggshells.[4] Scott, in the 'Fair Maid of Perth,' describes the 'Devil's Dick of Hellgarth' who followed the laird of Wamphray, who rode with the lord of Johnstone, who was banded with the Earl of Douglas, and earl, and lord, and laird, and the 'Devil's Dick' rode where they pleased and took what they chose. Does that imply that Scotland was then subject to force, and that now force has dis-

[1] P. 19. [2] P. 183. [3] P. 184. [4] Pp. 32, 112.

appeared? No; it means that the force that now stands behind a simple policeman is to the force of Douglas and his followers as the force of a line of battle ship to the force of an individual prize-fighter.[1] It works quietly precisely because it is overwhelming. Force therefore underlies and permeates every human institution. To speak of liberty taken absolutely as good is to condemn all social bonds. The only real question is in what cases liberty is good, and how far it is good. Buckle's denunciation of the 'spirit of protection' is like praising the centrifugal and reviling the centripetal force. One party would be condemning the malignity of the force which was dragging us all into the sun, and the other the malignity of the force which was driving us madly into space. The seminal error of modern speculation is shown in this tendency to speak as advocates of one of different forces, all of which are necessary to the harmonious government of conduct.[2]

This insistence upon the absolute necessity of force or coercion, upon the theory that, do what you will, you alter only the distribution, not the general quantity of force, is the leading principle of the book. Compulsion and persuasion go together, but the 'lion's share' of all the results achieved by civilisation is due to compulsion. Parliamentary government is a mild and disguised form of compulsion[3] and reforms are carried ultimately by the belief that the reformers are the strongest. Law in general is nothing but regulated force,[4] and even liberty is from the very nature of things dependent upon power, upon the protection, that is, of a powerful, well-organised intelligent government.[5] Hobbes's state of war simply threw an unpopular truth 'into a shape likely to be misunderstood.' There must be war, or evils worse than

[1] P. 244. [2] Pp. 193, 195. [3] P. 30.
[4] P. 239. [5] P. 184.

war. 'Struggles there must always be unless men stick like limpets or spin like weathercocks.'[1]

Hence we have our problem: liberty is good, not as opposed to coercion in general, but as opposed to coercion in certain cases. What, then, are the cases? Force is always in the background, the invisible bond which corresponds to the moral framework of society. But we have still to consider what limits may be laid down for its application. The general reply of a Utilitarian must of course be an appeal to 'expediency.' Force is good, says Fitzjames, following Bentham again, when the end to be attained is good, when the means employed are efficient, and when, finally, the cost of employing them is not excessive. In the opposite cases, force of course is bad. Here he comes into conflict with Mill. For Mill tries to lay down certain general rules which may define the rightful limits of coercive power. Now there is a *prima facie* ground of suspicion to a sound utilitarian about any general rules. Mill's rules were of course regarded by himself as based upon experience. But they savoured of that absolute *à priori* method which professes to deduce principles from abstract logic. Here, therefore, he had, as his opponent thought, been coquetting with the common adversary and seduced into grievous error. A great part of the argument comes to this: Mill advocates rules to which, if regarded as practical indications of certain obvious limitations to the utility of Government interference, Fitzjames has no objection. But when they are regarded as ultimate truths, which may therefore override even the principle of utility itself, they are to be summarily rejected. Thus, as we shall see, the practical differences are often less than appears. It is rather a question of the proper place and sphere of certain rules

[1] P. 96.

than of their value in particular cases. Yet at bottom there is also a profound divergence. I will try to indicate the main points at issue.

Mill's leading tenet has been already stated; the only rightful ground of coercing our neighbours is self-protection. Using the Benthamite terminology, we may say that we ought never to punish self-regarding conduct, or again interpolating the utilitarian meaning of 'ought' that such punishment cannot increase the general happiness. Fitzjames complains that Mill never tries to prove this except by adducing particular cases. Any attempt to prove it generally, would, he thinks, exhibit its fallacy. For, in brief, the position would really amount to a complete exclusion of the moral element from all social action. Men influence each other by public opinion and by law. Now if we take public opinion, Mill admits, though he disputes the inference from the admission, that a man must suffer the 'inconveniences strictly inseparable from the unfavourable opinion of others.' But men are units, not bundles of distinct qualities, some self-regarding, and others 'extra-regarding.' Everyone has the strongest interest in the character of everyone else. A man alone in the world would no more be a man than a hand without a body would be a hand.[1] We cannot therefore be indifferent to character because accidentally manifested in ways which do or do not directly and primarily affect others. Drunkenness, for example, may hurt a man's health or it may make him a brute to his wife or neglectful of his social duties. As moralists we condemn the drunkard, not the results of his conduct, which may be this or that according to circumstances. To regard Mill's principle as a primary moral axiom is, therefore, contradictory. It nullifies all law,

[1] P. 140.

moral or other, so far as it extends. But if Mill's admission as to the 'unfavourable opinions' is meant to obviate this conclusion, his theory merely applies to positive law. In that case it follows that the criminal law must be entirely divorced from morality. We shall punish men not as wicked but as nuisances. To Fitzjames this position was specially repulsive. His interest in the criminal law was precisely that it is an application of morality to conduct. Make it a mere machinery for enabling each man to go his own way, virtuous or vicious, and you exclude precisely the element which constituted its real value. Mill, when confronted with some applications of his theory, labours to show that though we have no right to interfere with 'self-regarding' vice, we may find reasons for punishing conspiracies in furtherance of vice. 'I do not think,' replies Fitzjames, 'that the state ought to stand bandying compliments with pimps.' It ought not to say that it can somehow find an excuse for calling upon them to desist from 'an experiment in living' from which it dissents. 'My feeling is that if society gets its grip on the collar of such a fellow, it should say to him, "You dirty fellow, it may be a question whether you should be suffered to remain in your native filth untouched, or whether my opinion should be printed by the lash on your bare back. That question will be determined without the smallest reference to your wishes or feelings, but as to the nature of my opinion about you there can be no doubt." '[1]

Hence the purely 'deterrent' theory of punishment is utterly unsatisfactory. We should punish not simply to prevent crime, but to show our hatred of crime. Criminal law is 'in the nature of a persecution of the grosser forms of vice, and an emphatic assertion of the principle that the

[1] P. 139.

feeling of hatred and the desire of vengeance above mentioned, (i.e. the emotion, whatever its proper name, produced by the contemplation of vice on healthily constituted minds) 'are important elements in human nature, which ought in such cases to be satisfied in a regular public and legal manner.'[1] This is one of the cases in which Fitzjames fully recognises the importance of some of Mill's practical arguments, though he disputes their position in the theory. The objections to making men moral by legislation are, according to him, sufficiently recognised by the Benthamite criterion condemning inadequate or excessively costly means. The criminal law is necessarily a harsh and rough instrument. To try to regulate the finer relations of life by law, or even by public opinion, is 'like trying to pull an eyelash out of a man's eye with a pair of tongs: they may pull out the eye, but they will never get hold of the eyelash.'[2] But it is not the end, but the means that are objectionable. Fitzjames does not object in principle even to sumptuary laws. He can never, he says, look at a lace machine, and think of all the toil and ingenuity wasted, with patience.[3] But he admits that repressive laws would be impossible now, though in a simpler age they may have been useful. Generally, then, the distinction between 'self-regarding' and 'extra-regarding' conduct is quite relevant, so far as it calls attention to the condition of the probable efficacy of the means at our disposal. But it is quite irrelevant in a definition of the end. The end is to suppress immorality, not to obviate particular inconveniences resulting from immorality; and one great use of the criminal law is that, in spite of its narrow limitations, it supplies a solid framework round which public opinion may consolidate itself. The sovereign is, in brief, a great teacher of the moral law so far as his arm can reach.

[1] P. 162. [2] P. 177. [3] P. 169.

The same principles are applied in a part of the book which probably gave more offence than any other to his Liberal opponents. The State cannot be impartial in regard to morals, for morality determines the bonds which hold society together. Can it, then, be indifferent in regard to religions? No; for morality depends upon religion, and the social bond owes its strength to both. The state can be no more an impartial bystander in one case than in the other. The 'free Church in a free State' represents a temporary compromise, not an ultimate ideal. The difference between Church and State is not a difference of provinces, but a difference of 'sanctions.' The spiritual and the secular sanctions apply to the same conduct of the same men. Both claim to rule all life, and are ultimately compelled to answer the fundamental questions. To separate them would be to 'cut human life in two,' an attempt ultimately impossible and always degrading. To answer fundamental questions, says Mill, involves a claim to infallibility. No, replies Fitzjames, it is merely a claim to be right in the particular case, and in a case where the responsibility of deciding is inevitably forced upon us. If the state shrinks from such decisions, it will sink to be a mere police, or, more probably, will at last find itself in a position where force will have to decide what the compromise was meant to evade. Once more, therefore, the limits of state action must be drawn by expediency, not by an absolute principle. The Benthamite formula applies again. Is the end good, and are the means adequate and not excessively costly? Mill's absolute principle would condemn the levy of a shilling for a school, if the ratepayer objected to the religious teaching. Fitzjames's would, he grants, justify the Inquisition, unless its doctrines could be shown to be false or the means of enforcing them excessive or inadequate—issues, he adds, which he would

be quite ready to accept.[1] Has, then, a man who believes in God and a future life a moral right to deter others from attacking those doctrines by showing disapproval? Yes, 'if and in so far as his opinions are true.'[2] To attack opinions on which the framework of society depends is, and ought to be, dangerous. It should be done, if done at all, sword in hand. Otherwise the assailant deserves the fate of the Wanderer in Scott's ballad:

> Curst be the coward that ever he was born
> That did not draw the sword before he blew the horn.[3]

Such opinions seem to justify persecution in principle. Fitzjames discusses at some length the case of Pontius Pilate, to which I may notice he had often applied parallels from Ram Singh and other Indian experiences. Pontius Pilate was in a position analogous to that of the governor of a British province. He decides that if Pilate had acted upon Mill's principles he would have risked 'setting the whole province in a blaze.' He condemns the Roman persecutors as 'clumsy and brutal'; but thinks that they might have succeeded 'in the same miserable sense in which the Spanish Inquisition succeeded,' had they been more systematic, and then would at least not have been self-stultified. Had the Roman Government seen the importance of the question, the strife, if inevitable, might have been noble. It would have been a case of 'generous opponents each working his way to the truth from opposite sides,' not the case of a 'touching though slightly hysterical victim, mauled from time to time by a sleepy tyrant in his intervals of fury.'[4] Still, it will be said, there would have been persecution. I believe that there was no man living who had a more intense aversion than Fitzjames to all oppression of the weak, and, above all, to religious

[1] P. 58. [2] P. 82.
[3] P. 84. The quotation is not quite accurate. [4] Pp. 105–107.

oppression. It is oddly characteristic that his main precedent is drawn from our interference with Indian creeds. We had enforced peace between rival sects; allowed conversion; set up schools teaching sciences inconsistent with Hindoo (and with Christian?) theology; protected missionaries and put down suttee and human sacrifices. In the main, therefore, we had shown 'intolerance' by introducing toleration. Fitzjames had been himself accused, on the occasion of his Native Marriages Bill, with acting upon principles of liberty, fraternity, and equality. His point, indeed, is that a government, even nervously anxious to avoid proselytism, had been compelled to act upon doctrines inconsistent with the religions of its subjects. I will not try to work out this little logical puzzle. In fact, in any case, he would really have agreed with Mill, as he admits, in regard to every actual question of the day. He admitted that the liberal contention had been perfectly right under the special circumstances. Their arguments were quite right so long as they took the lower ground of expediency, though wrong when elevated to the position of ultimate principles, overruling arguments from expediency.[1] Toleration, he thinks, is in its right place as softening and moderating an inevitable conflict. The true ground for moral tolerance is that 'most people have no right to any opinion whatever upon these subjects,' and he thinks that 'the ignorant preacher' who 'calls his betters atheists is not guilty of intolerance, but of rudeness and ignorance.'[2]

I must confess that this makes upon me the impression that Fitzjames was a little at a loss for good arguments to support what he felt to be the right mode of limiting his

[1] P. 109.

[2] P. 92. In the first edition the 'ignorant preacher' was a 'wretched *little* curate.' A rougher but more graphic phrase.

principles. The difficulty was due, I think, to the views which he shared with Mill. The utilitarian point of view tends to lower the true ground of toleration, because it regards exclusively the coercive elements of law. I should hold that free thought is not merely a right, but a duty, the exercise of which should be therefore encouraged as well as permitted; and that the inability of the coarse methods of coercion to stamp out particular beliefs without crushing thought in general, is an essential part of the argument, not a mere accident of particular cases. Our religious beliefs are not separate germs, spreading disease and capable of being caught and suppressed by the rough machinery of law, but parts of a general process underlying all law, and capable of being suppressed only at the cost of suppressing all mental activity. The utilitarian conception dwells too much upon the 'sanctions,' and too little on the living spirit, of which they are one expression.

Fitzjames's view may so far be summed up by saying that he denies the possibility of making the state a neutral in regard to the moral and religious problems involved. Morality, again, coincides with 'utility'; and the utility of laws and conduct in general is the criterion which we must apply to every case by the help of the appropriate experience. We must therefore reject every general rule in the name of which this criterion may be rejected. This applies to Mill's doctrine of equality, as well as to his doctrine of non-interference. I pass over some comparatively commonplace remarks upon the inconsistency of 'liberty' and 'equality.' The most unequivocal contradiction comes out in regard to Mill's theory of the equality of the sexes. There was no dogma to which Mill was more attached or to which Fitzjames was more decidedly opposed. The essence of the argument, I take it, is this:[1]

[1] There is here a discussion as to the relations between 'justice' and

A just legislator, says Mill, will treat all men as equals. He must mean, then, that there are no such differences between any two classes of men as would affect the expediency of the applying the same laws to both. What is good for one must therefore be good for another. Now, in the first place, as Fitzjames urges, there is no presumption in favour of this hypothesis; and, in the next place, it is obviously untrue in some cases. Differences of age, for example, must be taken into account unless we accept the most monstrous conclusions. How does this apply to the case of sex? Mill held that the difference in the law was due simply to the superiority of men to women in physical strength. Fitzjames replies that men are stronger throughout, stronger in body, in nerve and muscle, in mind and character. To neglect this fact would be silly; but if we admit it, we must admit its relevance to legislation. Marriage, for example, is one of the cases with which law and morality are both compelled to deal. Now the marriage contract necessarily involves the subordination of the weaker to the stronger. This, says Fitzjames, is as clearly demonstrable as a proposition of Euclid.[1] For, either the contract must be dissoluble at will or the rule must be given to one, and if to one, then, as every one admits, to the husband. We must then choose between entire freedom of divorce and the subordination of the wife. If two people are indissolubly connected and differ in opinions, one must give way. The wife, thinks Fitzjames, should give way as the seaman should give way to his captain; and to regard this as humiliating is a mark not of spirit but of a 'base, unworthy, mutinous disposition.'[2]

'utility' upon which Fitzjames agreed with Mill. I dissent from both, and think that Fitzjames would have been more consistent had he agreed with me. I cannot, however, here try to unravel a rather knotty point.

[1] P. 232. [2] P. 334.

If, to avoid this, you made marriage dissoluble, you would really make women the slaves of their husbands. In nine cases out of ten, the man is the most independent, and could therefore tyrannise by the threat of dismissing his wife. By trying to forbid coercion, you do not really suppress it, but make its action arbitrary.

He apologises to a lady in a letter referring to another controversy upon the same subject in which he had used rather strong language about masculine 'superiority.' 'When a beast is stirred up,' he says, 'he roars rather too loud,' and 'this particular beast loves and honours and worships women more than he can express, and owes most of the happiness of his life to them.' By 'superior' he only meant 'stronger'; and he only urges a 'division of labour,' and a correspondence between laws and facts. This was, I think, strictly true, and applies to other parts of his book. Partly from pugnacity and partly from contempt of sentimentalism, he manages to put the harsher side of his opinions in front. This appears as we approach the ultimate base of his theory.

I have spoken more than once of Fitzjames's respect for Hobbes. For Hobbes's theory of sovereignty, and even its application by the ultramontane De Maistre, had always an attraction for him. Hobbes, with his logical thoroughness, seems to carry the foundations of policy down to the solid rock-bed of fact. Life is a battle; it is the conflict of independent atoms; with differing aims and interests. The strongest, in one way or other, will always rule. But the conflict may be decided peacefully. You may show your cards instead of playing out the game; and peace may be finally established though only by the recognition of a supreme authority. The one question is what is to be the supreme authority? With De Maistre it was the Church; with Fitzjames as with Hobbes it was

the State. The welfare of the race can only be secured by order; order only by the recognition of a sovereign; and when that order, and the discipline which it implies, are established, force does not cease to exist: on the contrary, it is enormously increased in efficacy; but it works regularly and is distributed harmoniously and systematically instead of appearing in the chaotic clashing of countless discordant fragments. The argument, which is as clear as Euclid in the case of marriage, is valid universally. Society must be indissoluble; and to be indissoluble must recognise a single ultimate authority in all disputes. Peace and order mean subordination and discipline, and the only liberty possible is the liberty which presupposes such 'coercion.' The theory becomes harsh if by 'coercion' we mean simply 'physical force' or the fear of pain. A doctrine which made the hangman the ultimate source of all authority would certainly show brutality. But nothing could be farther from Fitzjames's intention than to sanction such a theory. His 'coercion' really includes an appeal to all the motives which make peace and order preferable to war and anarchy. But it is, I also think, a defect in the book that he does not clearly explain the phrase, and that it slips almost unconsciously into the harsher sense. He tells us, for example, that 'force is dependent upon persuasion and cannot move without it.'[1] Nobody can rule without persuading his fellows to place their force at his disposal; and therefore he infers 'persuasion is a kind of force.' It acts by showing people the consequences of their conduct. He calls controversy, again, an 'intellectual warfare,' which, he adds, is far more searching and effective than legal persecution. It roots out the weaker opinion. And so, when speaking of the part played by coercion in religious developments,

[1] P. 125.

he says that 'the sources of religion lie hid from us. All that we know is that now and again in the course of ages someone sets to music the tune which is haunting millions of ears. It is caught up here and there, and repeated till the chorus is thundered out by a body of singers able to drown all discords, and to force the unmusical mass to listen to them.'[1] The word 'force' in the last sentence shows the transition. Undoubtedly force in the sense of physical and military force has had a great influence in the formation both of religions and nations. We may say that such force is 'essential'; as a proof of the energy and often as a condition of the durability of the institutions. But the question remains whether it is a cause or an effect; and whether the ultimate roots of success do not lie in that 'kind of force' which is called 'persuasion'; and to which nobody can object. If coercion be taken to include enlightenment, persuasion, appeals to sympathy and sentiment, and to imagination, it implies an ultimate social groundwork very different from that generally suggested by the word. The utilitarian and individualist point of view tends necessarily to lay stress upon bare force acting by fear and physical pain. The utilitarian 'sanctions' of law must be the hangman and the gaoler. So long as society includes unsocial elements it must apply motives applicable to the most brutal. The hangman uses an argument which everyone can understand. In this sense, therefore, force must be the ultimate sanction, though it is equally true that to get the force you must appeal to motives very different from those wielded by the executioner. The application of this analogy of criminal law to questions of morality and religion affects the final conclusions of the book.

Fitzjames's whole position, if I have rightly interpreted

[1] P. 69.

him, depends essentially upon his moral convictions. The fault which he finds with Mill is precisely that Mill's theory would unmoralise the state. The state, that is, would be a mere association for mutual insurance against injury instead of an organ of the moral sense of the community. What, then, is morality? How are we to know what is right and wrong, and what are our motives for approving and disapproving the good and the bad? Fitzjames uses phrases, especially in his letters, where he is not arguing against an adversary, which appear to be inconsistent, if not with utilitarianism, at least with the morality of mere expediency. Lord Lytton, some time after this, wrote to him about his book, and he replies to the question, 'What is a good man?'—'a man so constituted that the pleasure of doing a noble thing and the pain of doing a base thing are to him the greatest of pleasures and pains.' He was fond, too, of quoting, with admiration, Kant's famous saying about the sublimity of the moral law and the starry heavens. The doctrine of the 'categorical imperative' would express his feelings more accurately than Bentham's formulæ. But his reasoning was different. He declares himself to be a utilitarian in the sense that, according to him, morality must be built upon experience. 'The rightness of an action,' he concludes, 'depends ultimately upon the conclusions at which men may arrive as to matters of fact.'[1] This, again, means that the criterion is the effect of conduct upon happiness. Here, however, we have the old difficulty that the estimate of happiness varies widely. Fitzjames accepts this view to some extent. Happiness has no one definite meaning, although he admits, in point of fact, there is sufficient resemblance between men to enable them to form such morality as actually exists.

[1] P. 370.

But is such morality satisfactory? Can it, for example, give sufficient reasons for self-sacrifice—that is, neglect of my own happiness? Self-sacrifice, he replies, in a strict sense, is impossible; for it could only mean acting in opposition to our own motives of whatever kind—which is an absurdity.[1] But among real motives he admits benevolence, public spirit, and so forth, and fully agrees that they are constantly strong enough to overpower purely self-regarding motives. So far, it follows, the action of such motives may be legitimately assumed by utilitarians. He is, therefore, not an 'egoistic' utilitarian. He thinks, as he says in a letter referring to his book, that he is 'as humane and public-spirited as his neighbours.' A man must be a wretched being who does not care more for many things outside his household than for his own immediate pains and pleasures. Had he been called upon to risk health or life for any public object in India, and failed to respond, he would never have had a moment's peace afterwards. This was no more than the truth, and yet he would sometimes call himself 'selfish' in what I hold to be a non-natural sense. He frequently complains of the use of such words as 'selfishness' and 'altruism' at all. Selfishness, according to him, could merely mean that a man acts from his own motives, and altruism would mean that he acted from somebody else's motives. One phrase, therefore, would be superfluous, and the other absurd. He insists, however, that, as he puts it, 'self is each man's centre, from which he can no more displace himself than he can leap off his own shadow.'[2] Since estimates of happiness differ, the morality based upon them will also differ.[3] And from selfishness in this sense two things follow. First, I have to act upon my own individual conception of morality.

[1] P. 294. [2] P. 300. [3] P. 288.

If, then, I meet a person whose morality is different from mine, and who justifies what I hold to be vices, I must behave according to my own view. If I am his ruler, I must not treat him as a person making a possibly useful experiment in living, but as a vicious brute, to be restrained or suppressed by all available means. And secondly, since self is the centre, since a 'man works from himself outwards,' it is idle to propose a love of humanity as the guiding motive to morality. 'Humanity is only "I" writ large, and zeal for humanity generally means zeal for My Notions as to what men should be and how they should live.' [1]

This, therefore, leads to the ultimate question: What, in the utilitarian phrase, is the 'sanction' of morality? Here his answer is, on one side at least, emphatic and unequivocal. Mill and the positivists, according to him,[2] propose an utterly unsatisfactory motive for morality. The love of 'humanity' is the love of a mere shadowy abstraction. We can love our family and our neighbours; we cannot really care much about the distant relations whom we shall never see. Nay, he holds that a love of humanity is often a mask for a dislike of concrete human beings. He accuses Mill of having at once too high and too low an opinion of mankind.[3] Mill, he thinks, had too low an estimate of the actual average Englishman, and too high an estimate of the ideal man who would be perfectly good when all restraints were removed. He excused himself for contempt of his fellows by professing love for an abstraction. To set up the love of 'humanity,' in fact, as a governing principle is not only impracticable, but often mischievous. A man does more good, as a rule, by

[1] P. 300.

[2] I repeat that I do not ask whether his interpretation be correct.

[3] Pp. 49–60.

working for himself and his family, than by acting like a 'moral Don Quixote,[1] who is capable of making love for men in general the ground of all sorts of violence against men in particular.' Indeed, there are many men whom we ought not to love. It is hypocrisy to pretend to love the thoroughly vicious. 'I do not love such people, but hate them,' says Fitzjames; and I do not want to make them happy, because I could only do so by 'pampering their vices.'[2]

Here, therefore, he reaches the point at which his utilitarian and his Puritanical prepossessions coincide. All law, says the utilitarian, implies 'sanctions'—motives equally operative upon all members of society; and, as the last resort, so far as criminal law is concerned, the sanction of physical suffering. What is the corresponding element in the moral law? To this, says Fitzjames, no positivist can give a fair answer. He has no reply to anyone who says boldly, 'I am bad and selfish, and I mean to be bad and selfish.'[3] The positivists can only reply, 'Our tastes differ.' The great religions have answered differently. We all know the Christian answer, and 'even the Buddhists had, after a time, to set up a hell.' The reason is simple. You can never persuade the mass of men till you can threaten them. Religions which cannot threaten the selfish have no power at all; and till the positivists can threaten, they will remain a mere 'Ritualistic Social Science Association.' Briefly, the utilitarian asks, What is the sanction of morality? And the Puritan gives the answer, Hell. Here, then, apparently, we have the keystone of the arch. What is the good of government in general? To maintain the law? And what is the end of the law? To maintain morality. And why should we maintain morality? To

[1] P. 302. [2] P. 287. [3] P. 132.

escape hell. This, according to some of his critics, was Fitzjames's own conclusion. It represents, perhaps in a coarse form, an argument which Fitzjames was never tired of putting since the days when he worked out the theory of hell at school.

It would, however, be the grossest injustice to him if I left it to be supposed for a moment that he accepted this version of his doctrine. He repudiated it emphatically; and, in fact, he modifies the doctrine so much that the real question is, whether he does not deprive it of all force. No one was more sensible of the moral objections to the hell of popular belief. He thought that it represented the Creator as a cruel and arbitrary tyrant, whose vengeance was to be evaded by legal fictions. Still, the absolute necessity of some 'sanction' of a spiritual kind seemed clear to him. Without it, every religion would fall to pieces, as every system of government would be dissolved without 'coercion.' And this is the final conclusion of his book in chapters with which he was, as I find from his letters, not altogether satisfied. He explains in the preface to his second edition that the question was too wide for complete treatment in the limits. Briefly the doctrine seems to be this. The Utilitarian or Positivist can frame a kind of commonplace morality, which is good as far as it goes. It includes benevolence and sympathy; but hardly gets beyond ordering men to love their friends and hate their enemies. To raise morality to a higher strain, to justify what it generally called self-sacrifice, to make men capable of elevated action, they require something more. That something is the belief in God and a future world. 'I entirely agree,' he says, 'with the commonplaces about the importance of these doctrines.'[1] If they be mere dreams life is a much

[1] P. 75.

poorer and pettier thing, and mere physical comfort far more important than has hitherto been supposed. Morality, he says, depends on religion. If it be asked whether we ought to rise beyond the average utilitarian morality, he replies, 'Yes, if there is a God and a future state. No, if there is no God and no future state.'[1] And what is to be said of those doctrines, the ultimate foundation, if not of an average morality, yet of all morality above the current commonplaces? Here we have substantially the religious theory upon which I have already dwelt. He illustrates it here by quotations from Mill, who admits the 'thread of consciousness' to be an ultimate inexplicability, and by a passage from Carlyle, 'the greatest poet of the age,' setting forth the mystery of the 'Me.' He believes in a Being who, though not purely benevolent, has so arranged the universe, that virtue is the law prescribed to his creatures. The law is stern and inflexible, and excites a feeling less of love than of 'awful respect.' The facts of life are the same upon any theory; but atheism makes the case utterly hopeless. A belief in God is inextricably connected with a belief in morality, and if one decays the other will decay with it. Still it is idle to deny that the doctrines are insusceptible of proof. 'Faith says, I will, *though* I am not sure; Doubt says, I will not, *because* I am not sure; but they both agree in not being sure.'[2] He utterly repudiates all the attempts made by Newman and others to get out of the dilemma by some logical device for transmuting a mere estimate of probabilities into a conclusion of demonstrable certitude. We cannot get beyond probabilities. But we have to make a choice and to make it at our peril. We are on a pass, blinded by mist and whirling snow. If we stand still, 'we shall be frozen to death. If we take the wrong road, we shall be

[1] P. 295. [2] P. 343.

dashed to pieces. We do not certainly know whether there is any right one. What must we do? "Be strong and of a good courage." Act for the best, hope for the best, and take what comes. Above all let us dream no dreams and tell no lies, but go our way, wherever we may land, with our eyes open and our heads erect. If death ends all, we cannot meet it better. If not, let us enter the next scene with no sophistry in our mouths and no masks on our faces.'[1]

A conclusion of this kind could commend itself neither to the dogmatist who maintains the certainty of his theories, nor to the sceptic who regards them as both meaningless and useless. I have dwelt upon them so long because they seem to me to represent a substantially logical and coherent view which commended itself to a man of very powerful intellect, and which may be presumed to represent much that other people hold less distinctly. The creed of a strong man, expressed with absolute sincerity, is always as interesting as it is rare; and the presumption is that it contains truths which would require to be incorporated in a wider system. At any rate it represents the man; and I have therefore tried to expound it as clearly as I could. I may take it for granted in such references as I shall have to make in the following pages to my brother's judgment of the particular events in which he took part. Mill himself said, according to Professor Bain,[2] that Fitzjames 'did not know what he was arguing against, and was more likely to repel than to attract.' The last remark, as Professor Bain adds, was the truest. Mill died soon afterwards and made no reply, if he ever intended to reply. The book was sharply criticised from the positivist point of view by Mr. Harrison, and from Mill's point of view by Mr. John Morley

[1] P. 354.

[2] Bain's *J. S. Mill*, p. 111.

in the 'Fortnightly Review' (June and August 1873). Fitzjames replied to them in a preface to a second edition in 1874. He complains of some misunderstandings; but on the whole it was a fair fight, which he did not regret and which left no ill-feeling.

III. DUNDEE ELECTION

The last letter of the series had hardly appeared in the 'Pall Mall Gazette,' when Fitzjames received an application to stand for Liverpool in the Liberal interest. He would be elected without expense to himself. He thought, as he observes, that he should find parliamentary life 'a nuisance'; but a seat in the House might of course further both his professional prospects and his schemes of codification. He consulted Coleridge, who informed him that, if Government remained in office, a codification Commission would be appointed. Coleridge was also of opinion that, in that event, Fitzjames's claims to a seat on the Commission would be irresistible. As, however, it was intended that the Commissioners should be selected from men outside Parliament and independent of political parties, Fitzjames would be disqualified by an election for Liverpool. Upon this he at once declined to stand. A place in a codification Commission would, he said, 'suit him better than anything else in the world.' Coleridge incidentally made the remark, which seems to be pretty obvious, that the authorship of the letters upon 'Liberty, Equality, Fraternity' would be a rather awkward burthen for a Liberal candidate to carry.

For some time Fitzjames might hope, though he hoped with trembling, that something would come of his various codifying projects. It was reported that Mr. Bruce (Lord Aberdare) would introduce the Homicide

Bill during Russell Gurney's absence. Coleridge was able after many delays to introduce the Evidence Bill. But it was crowded out of sight by more exciting measures, and it was only upon its final withdrawal on the last day of the session (August 5, 1873) that he could say a few words about it.[1] The Bill was apparently ordered to be printed, but never became public. It went to the parliamentary limbo with many of its brethren.

In the session of 1873 the Government was beginning to totter. The ministerial crisis of March, upon the defeat of the Irish University Bill, was followed by Mr. Gladstone's resignation. He returned to office, but had to attend to questions very different from codification. 'My castle of cards has all come down with a run,' writes Fitzjames (March 14, 1873); 'Gladstone is out of office; Coleridge is going out; my Evidence Act and all my other schemes have blown up—and here am I, a briefless, or nearly briefless, barrister, beginning the world all over again. . . . I have some reason to think that, if Gladstone had stayed in, I should, in a few weeks, have been Solicitor-General, and on my way to all sorts of honour and glory.' However, he comforts himself with various proverbs. His favourite saying on these occasions, which were only too common, was 'Patience, and shuffle the cards.' The Gladstone Ministry, however, was patched up, and things looked better presently. 'I am,' he says in May, 'in the queerest nondescript position—something between Solicitor-General and Mr. Briefless—with occasional spurts of business' which look promising, but in frequency resemble angelic visits. On June 27 he announces, however, that a whole heap of briefs 'has come in, and, to crown all, a solemn letter came yesterday from the Lord Chancellor, offering to appoint me to act as

[1] *Digest of Law of Evidence*, preface.

circuit judge in the place of Lush, who stays in town to try that lump of iniquity, the Claimant.' He was, accordingly, soon at the Winchester Assizes, making a serious experiment in the art of judging, and finding the position thoroughly congenial. He is delighted with everything, including Chief Baron Kelly, a 'very pleasant, chatty old fellow,' who had been called to the bar fifty years before, and was still bright and efficient. Fitzjames's duties exactly suit him. They require close attention, without excessive labour. He could judge for nine hours a day all the year round without fatigue. He gets up at 5.30, and so secures two or three hours, 'reading his books with a quiet mind.' Then there is the pleasure of choosing the right side, instead of having to take a side chosen by others; while 'the constant little effort to keep counsel in order, and to keep them also in good humour, and to see that all things go straight and well, is to me perfectly exquisite.' His practice in journalism has enabled him to take notes of the evidence rapidly, without delaying the witnesses; and he is conscious of doing the thing well and giving satisfaction. The leader of the circuit pays him 'a most earnest compliment,' declaring that the 'whole bar are unanimous in thinking the work done as well as possible. This,' he says, 'made me very happy, for I know, from knowing the men and the bar, it is just the case in which one cannot suspect flattery. If there are independent critics in this world, it is British barristers.' Briefly, it is a delicious 'Pisgah sight of Palestine.' If, in Indian phrase, he could only become 'pucka' instead of 'kucha'—a permanent instead of temporary judge—he would prefer it to anything in the world. He feels less anxious, and declares that he has 'not written a single article this week'; though he manages when work is slack, to find time for a little writing, such as the chapter in Hunter's 'Life of Lord Mayo.'

The assizes were being held at Salisbury soon afterwards, when Fitzjames was summoned to London by a telegram from Coleridge. Coleridge had to tell him that if he could stand for Dundee, where a vacancy had just occurred, he would probably be elected; and that, if elected, he would probably, though no pledge could be given, be made Solicitor-General. Lord Romilly had retired from the Mastership of the Rolls in March. The appointment of his successor was delayed until the Judicature Act, then before Parliament, was finally settled. As, however, Coleridge himself or the Solicitor-General, Sir G. Jessel, would probably take the place, there would be a vacancy in the law offices. Fitzjames hesitated; but, after consulting Lord Selborne, and hearing Coleridge's private opinion that he would be appointed Solicitor-General even if he failed to win the seat, he felt that it would be 'faint-hearted' to refuse. He was to sit as judge, however, at Dorchester, and thought that it would be improper to abandon this duty. The consequent delay, as it turned out, had serious effects. From Dorchester he hurried off to Dundee.

He writes from Dundee on Sunday, July 27, 1873, giving an account of his proceedings. He had been up till 5 A.M. on the morning of the previous Tuesday, and rose again at eight. He did not get to bed till 3 A.M. on Wednesday. He was up at six, went to Dorchester, and attended a 'big dinner,' without feeling sleepy. On Thursday he tried prisoners for four hours; then went to London, and 'rushed hither and thither' from 10 P.M. till 2 A.M. on Friday. He was up again at six, left by the 7.15 train, reached Dundee at 10.30, and was worried by deputations till past twelve. Part of the Liberal party had accepted another candidate, and met him with a polite request that he would at once return to the place whence he came. He preferred to take a night's

rest and postpone the question. On Saturday he again 'rushed hither and thither' all day; spoke to 2,000 people for nearly two hours, was 'heckled' for another hour in stifling heat, and had not 'the slightest sensation of fatigue,' except a trifling headache for less than an hour. He was 'surprised at his own strength,' feeling the work less than he had felt the corresponding work at Harwich in 1865.

The struggle lasted till August 5, the day of polling. Fitzjames had to go through the usual experience of a candidate for a large constituency: speaking often six times a day in the open air; addressing crowded meetings at night; becoming involved in a variety of disputes, more or less heated and personal in their nature; and seeing from the inside the true nature of the process by which we manufacture legislators. It was the second election in Dundee affected by Disraeli's extension of the suffrage, and, I believe, the first election in the country which took place under the provisions of the Ballot Act. The work was hard and exciting, especially for a novice who had still to learn the art of speaking to large public meetings; but it was such work as many eager politicians would have enjoyed without reserve. To Fitzjames it was a practical lesson in politics, to which he submitted with a kind of rueful resignation, and from which he emerged with intensified dislike of the whole system concerned.

Dundee was a safe Liberal seat; the working classes under the new system had an overwhelming majority; and no Tory candidate had ventured to offer himself.[1] Fitzjames was virtually the Government candidate. One of his opponents, Mr. Yeaman, had been provost of Dundee,

[1] I have to thank Mr. A. H. Millar, of Dundee, for some papers and recollections referring to this election.

but his fame does not appear to have spread beyond his native town. While Fitzjames was lingering at Dorchester another candidate had come forward, Mr. Edward Jenkins, known as the author of 'Ginx's Baby.' This very clever little book, which had appeared a couple of years previously, had struck the fancy of the public, and run through a great number of editions. It reflected precisely the school of opinion which Fitzjames most cordially despised. The morality was that of Dickens's 'Christmas Carol,' and the political aim that of sentimental socialism. Thus, though all three candidates promised to support Mr. Gladstone's Government, one of Fitzjames's rivals represented the stolid middle-class prejudices, and a second the unctuous philanthropic enthusiasm, which he had denounced with his whole force in 'Liberty, Equality, Fraternity.' No combination could have been contrived which would have set before him more clearly the characteristics of the party of which he still considered himself to be a member.

From the beginning he felt himself to be, in some respects, in a false position. 'My dislike of the business,' he says at starting, 'is not the least due to weakness or over-delicacy, but to a deep-rooted disgust at the whole system of elections and government by constituencies like this.' Three days' experience do not change his view. It is, he says, 'hateful work—such a noise, such waste of time, such unbusinesslike, raging, noisy, irregular ways, and such intolerable smallness in the minds of the people, that I wonder I do not do it even worse.' He could scarcely stand a month of it for a certainty of the Solicitor-Generalship. On the day before the poll he observes that 'it is wretched, paltry work.' A local paper is full of extracts from his 'Liberty, Equality, Fraternity,' which, he fears, will not help him. However, 'it was

very good fun writing it.' And meanwhile, Mr. Jenkins was making speeches which showed that 'his heart beat in unison with the people's,' and speaking 'earnest words' on Sunday afternoon to boys on a training ship. Even an enthusiastic speech from one of Fitzjames's supporters at a large meeting, which was followed by a unanimous vote of approval, 'nearly made him sick—it was so unspeakably fulsome.' It was no wonder that he should be inclined to be disgusted with the whole business.

Considering the general uncongeniality of the surroundings, the most remarkable thing was that he made so good a fight as he did. He was encouraged by the presence of his brother by adoption and affection, Frederick Gibbs. 'No one,' he reports, 'could be kinder or more sensible; and he is as cool as a cucumber, and not shocked by my cynical heresies.' From Frederick Gibbs, as he afterwards reports, he has received the 'best and wisest' advice on every point. The 'cynical heresies' to which he refers were simply those already expounded in his book. He said precisely what he thought, and as vigorously as he could say it. A campaign paper, called the 'Torch,' published by some of his supporters, sums up the difference between him and Mr. Jenkins. 'Mr. Stephen's liberalism,' says the 'Torch,' 'is much nearer to radicalism than the liberalism of Mr. Jenkins. Mr. Stephen's liberalism is the liberalism of self-help, of individualism, of every form of conscious industry and energy. It is the only liberalism which has the smallest chance of success in Scotland. The liberalism of Mr. Jenkins is the liberalism of state aid, of self-abasement, of incapacity and indolence'; and leads straight to sentimental communism. According to a 'working man' who writes to the paper, Mr. Jenkins virtually proposes that the industrious part of the working classes are to support the

children of the lazy, idle, and improvident—a principle which many people now seem inclined to regard as defensible.

Fitzjames's accounts of his own speeches are to the same purpose. He has repeated, he says, what he has always and everywhere maintained—that people must 'help themselves, and that every class of society is bound together, and is in one boat and on one bottom.' I have read the reports in the local newspapers, which fully confirm this statement; but I need only notice one point. He manages to get in a good word for codification, and illustrates his argument by an ingenious parallel with Bradshaw's 'Railway Guide.' That 'code' is puzzling enough as it is; but what would be our state if we had to discover our route by examining and comparing all the orders given by the directors of railways from their origin, and interpreting them in accordance with a set of unwritten customs, putting special meanings upon the various terms employed?

The educated classes, as the 'Torch' asserts, and as his supporters told him, were entirely in his favour; and, had the old suffrage remained unaltered, no one else would have had a chance against him. Not only so, but they declared that every speech he made was converting the working classes. He is told that, if he had longer time, he would be able to 'talk them all round.' His speeches obviously impressed his hearers for the time. 'You cannot imagine,' he says on August 2, 'how well I get on with the people here, working men as well as gentry. They listen with the deepest attention to all I say, and question me with the keenest intelligence.' He admits, indeed, that there is no political sympathy between him and his hearers. They want a 'thorough-going radical,' and he cannot pretend to be one—'it is forced out on all occa-

sions.' In fact, he was illustrating what he had said in his book. He heartily liked the individual working man; but he had no sympathy with the beliefs which find favour with the abstract or collective working man, who somehow manages to do the voting. They seem to have admired his force, size, and manliness. 'Eh, but ye're a wiselike mon ony way,' says a hideous old woman (as he ungratefully calls her), which, he is told, is the highest of Scottish compliments to his personal appearance. This friendly feeling, and the encouragement of his supporters, and the success of his speeches, raised his hopes by degrees, and he even 'felt a kind of pride in it,' though 'it is poor work educating people by roaring at them.' Towards the end he even thinks it possible that he may win, and, if so, 'it will be an extraordinary triumph, for I have never asked one single person to support me, and I have said the most unpopular things to such an extent that my supporters told me I was over-defiant, or, indeed, almost rude.'

However, it was not to be. Whether, as his friends said, he was too good for the place, or whether less complimentary reasons alleged by his opponents might be justified, he was hopelessly behind at the polls. He received 1,086 votes; Mr. Jenkins, 4,010; and Mr. Yeaman, 5,207—or rather more than both his opponents together. Fitzjames comforts himself by the reflection that both he and Mr. Jenkins had shown their true colours; that the respectable people had believed in him 'with a vengeance,' and that the working men were beginning to like him. But Mr. Jenkins's views were, and naturally must be, the most popular. Fitzjames's chief supporter gave a dinner in his honour, when his health was drunk three times with boundless enthusiasm, and promises were made of the heartiest support on a future

occasion. The fulfilment of the promises was not required; and Fitzjames, in spite of occasional overtures, never again took an active part in a political contest.

In 1881, Lord Beaconsfield wrote to Lord Lytton: 'It is a thousand pities that J. F. Stephen is a judge; he might have done anything and everything as leader of the future Conservative party.' Lord Beaconsfield was an incomparably better judge than I can pretend to be of a man's fitness for such a position. The opinion, too, which he thus expressed was shared by some of Fitzjames's friends, who thought that his masculine force of mind and downrightness of character would have qualified him to lead a party effectively. I shall only say that it is idle to speculate on what he might have done had he received the kind of training which seems to be generally essential to success in political life. He might, no doubt, have learnt to be more tolerant of the necessary compromises and concessions to the feelings engendered by party government. As it was, he had, during his early life, taken so little interest in the political movements of the day, and, before he was dragged for a time into the vortex, had acquired so many prepossessions against the whole system, that I cannot but think that he would have found a difficulty in allying himself closely with any party. He considered the Tories to be not much, if at all, better than the Radicals; and he would, I fancy, have discovered that both sides had, in Lowell's phrase, an equal facility for extemporising lifelong convictions. Upon this, however, I need not dwell. In any case, I think that the Dundee defeat was a blessing in disguise; for, had he been elected and found himself enlisted as a supporter of Mr. Gladstone, his position would have been almost comically inappropriate. A breach would, doubtless, have followed; and perhaps it would have been an

awkward business to manage the transition with delicacy.

Fitzjames, in fact, discovered at Dundee that he was not really a 'Liberal' in the sense used in modern politics. His 'liberalism,' as the 'Torch' said, meant something radically opposed to the ideas which were becoming dominant with the party technically called by the name. His growing recognition of a fact which, it may perhaps be thought, should have already been sufficiently obvious, greatly influenced his future career. Meanwhile, he went back to finish his duties as Commissioner at the assizes, and to reflect upon the lessons which, as he said, he had learnt at Dundee. He had fresh ideas, he said, as to politics and the proper mode of treating them. He propounded some of his doctrines in a couple of lectures upon 'Parliamentary Government,' delivered to the Edinburgh Philosophical Society in the following November.[1] He describes some of the familiar consequences; shows how our administrative system has become an 'aggregate of isolated institutions'; and how the reduction of the Royal power to a cipher has led to the substitution of a set of ministers, each a little king in his own department, and shifted backwards and forwards in obedience to popular sentiment. One result is the subordination to party purposes of important interests not essentially connected with them. At the present moment, he says, a disaster on the west coast of Africa would affect the prospects of popular education. That is as rational as it would be to change your lawyer because you have had to discharge your cook. Fitzjames, however, was under no illusions. He fully admits that parliamentary government is inevitable, and that foreign systems are in some respects worse, and,

[1] They were substantially republished in the *Contemporary Review* for December 1873 and January 1874.

in any case, incapable of being introduced. He confines himself to suggesting that some departments of administration and legislation might be withdrawn from the influence of our party system.

IV. CODIFICATION IN ENGLAND

Fitzjames had returned to act again as Commissioner at Wells. There he had to listen to a vehement sermon from Archdeacon Denison, in favour of auricular confession, and glancing, as his hearer fancied, at a certain article in the 'Pall Mall Gazette.' He had afterwards a pleasant chat with Freeman, 'not a bad fellow at all,' though obviously a 'terrible pedant.' He hears from Coleridge, who has finally decided against accepting the Mastership of the Rolls, and hopes that Fitzjames may still be his colleague. The old Chief Baron is still charming, and says ('though I don't believe it') that he never knew what mental fatigue meant, and that when he was Solicitor-General he was never in bed for more than two or three hours for four or five nights a week ('which, again, I do not believe'). However, it is undeniable that he can still do his work as well as many younger men.

The chance of the Solicitor-Generalship was soon extinguished. Coleridge was friendly, but explained that political considerations might prevent any attention being paid to his personal wishes. In September, in fact, Sir Henry James was appointed to the vacant post and the hope finally disappeared. There was still, however, a possibility of a seat on the bench, which would please him still better. He feels that his proper place is out of Parliament. He could exercise more influence 'than all the Solicitor-Generals in the world' by simply devoting himself to writing, and he is full of plans for books. But

he would like to be a judge for the sake both of the money and the work. 'The administration of justice is really the best thing which is going on in the nation.' On January 9, 1874, however, he announces that his little 'bubble about the judgeship, which looked a very bright bubble indeed, has gone where all bubbles go.' Twenty people had congratulated him upon his appointment and three judges had written to recommend clerks. Last night he had heard decisively that he was not to have it. Coleridge, too, had become Lord Chief Justice and the Government business had gone elsewhere. Well, he will 'put on some extra work to keep hold of the wolf's ears which he has held so long.' Coleridge, I may add, still took an interest in Fitzjames's codification schemes, and they even agreed, or rather vaguely proposed, to act the parts of 'Moses and Aaron,' Fitzjames inspiring measures of which Coleridge was to take charge in the House of Lords. This dream, however, vanished like others.

The dissolution of Parliament in January, 1874, was followed by a general election. Proposals were made to Fitzjames to stand at several places; including Dundee, where, however, Mr. Jenkins was elected. For one reason or other he declined the only serious offers, and was 'not sorry.' He could not get over 'his dislike to the whole affair.' He 'loathed elections,' and 'could not stand the idea of Parliament.' Disraeli soon came into office, and 'the new ministry knew not Joseph.' Fitzjames had quite got over his disappointment about the judgeship, though he admits that he had at first felt it 'bitterly.' He has not known how to find favour with chancellors or ministers. He therefore resolves to make his own way; he cares more for what he is in himself than for the position he holds; and he reconciles himself 'to the prospect which obviously lies before him,' of obscure hard 'labour for a good many years.' He 'puts away all his fair hopes

in his pocket, and resolves to do three things: a good bit of codifying,' whether on his own account or for Government; a little book about India; and finally the *magnum opus* which he had so long meditated, which he thought that he ought to begin when he was fifty (he was at this time just forty-five), and which might take about fifteen years. The little book about India is afterwards frequently mentioned in his letters under its proposed title, 'The English in India.' It was, I think, to be more or less historical, and to occupy some of the ground covered by Sir Alfred Lyall's 'British Dominion in India.' It never took definite shape, but led to the work upon Impey, of which I shall have to speak hereafter. Meanwhile he is not without some good professional omens. He feels that he will have to 'restrict his circuiteering,' and not to go to most of the towns without special retainers. Good work is coming to him in London, though not so frequently as might be wished.

The codifying, in fact, took up much of his time. The 'Homicide Bill' was introduced into Parliament this year (1874) by Russell Gurney, and referred to a Select Committee. They consulted Cockburn, Bramwell, and Blackburn, who appear to have been on the whole hostile. Bramwell, however, declared that the Bill was 'excellently drawn,' and in a friendly letter to Fitzjames condemned the spirit of hostility in which it had been received by other judges. The main objection put forward by Cockburn and accepted by the Committee was the objection to a partial measure. The particular question of homicide involved principles applying to other parts of the criminal law; and a partial treatment would only serve to introduce confusion and doubt. The Committee accordingly recommended that the Bill should be dropped. Fitzjames accepted this not as a reason for abandoning the attempt but for extending

the scope of the proposed measure. The result will appear presently.

The change of Government was not altogether unfavourable. Early in March he received instructions from Lord Salisbury, who had succeeded the Duke of Argyll at the India Office, to consolidate the Acts relating to the government of India. He set to work with his usual energy, and a statement prefixed to the printed draft of the Bill is dated June 2, 1874. In less than three months he had done a big piece of work. The consolidation of these laws had been in contemplation in England and India for some time. Various preparations had been made by Government, including a draft of the proposed Act by Mr. Herman Merivale, then permanent under-secretary at the India Office. Fitzjames, however, had to go through the whole, and, as he laments, without such help as he could have commanded from his subordinates in India. He prepared an elaborate schedule showing every unrepealed section of every Act relating to India since 1770. The 'kernel of the law' was contained in eight Acts; the 'Regulating Act' of 1773, the Acts upon the successive renewal of the Company's charter, and the Acts passed upon the transference of the Company's powers to the Crown. As each of these had been superposed upon its predecessors without repealing them, it was necessary to go through them all to discover what parts were still in force; how far any law had been modified by later enactments, and what parts of the law it might be desirable to leave unaltered; and then to fuse the whole into unity. Fitzjames proposes to repeal forty-three Acts with the exception of certain sections, and to substitute for the repealed portions a single Act of 168 sections, shorter, as he remarks, than some of those repealed. The result would be to save a great deal of labour to hard-worked

Indian officials, who required to know the precise limits of their authority; and the Act would form a complete constitutional code, determining the powers and the mutual relations of the whole Indian administrative and legislative system.

The draft was carefully criticised by the authorities. Fitzjames himself went through it again in the following January with Maine and Sir Erskine Perry, and it was finally made ready to be laid before Parliament. Lord Salisbury introduced in the following session a preparatory measure which would be incidentally required. This, however, was withdrawn in consequence, it seems, of objections made by the Legislative Council in India, and the whole code went to the usual limbo. I do not know what was the precise nature of the objection, but probably it was thought that the new law might stir up questions which it was better to leave in repose. Anyhow, nothing came of it. 'You have done your work and got your fee, and what more do you want?' observed a cynical friend. To which Fitzjames could only reply, ruefully enough, 'True, O King.'

This task interrupted another upon which he had been engaged, and which he took up again as soon as it was finished. He writes upon July 3, 1874, that his prospects have improved, and that he has therefore 'turned his mind to his books in real earnest.' They are a 'large family' and rather crowd upon him. However, his first enterprise will be 'a codification of the English law of contracts, founded upon the Indian Act, but larger and more elaborate in every way.' If the country takes to codifying (the dream had not yet vanished), this might become his profession. Anyhow, he will be able to give his mind to what he really cares for. He had been already hard at work upon his 'Contract Book' in the winter before he

was instructed to prepare the Acts for the Government of India. This task, I may observe, had led him to study some of the German jurists. He had perfected his German with the help of a master in the summer of his return, and was now able to read the language comfortably. He expresses at first sight anything but acquiescence in German claims to philosophical pre-eminence, but after a time he comes to understand the respect which Austin professed for Savigny. His study of the Law of Contracts was apparently broken off by a renewed call to take up once more the Criminal Law. Of this I shall have to speak presently.

The reference just quoted to improved prospects is to be explained by an influx of parliamentary business which took place at this time. He was leading counsel in the session of 1874 for the London, Chatham and Dover Railway Company, and appeared for them in several cases. The impression which he made upon professional observers has been reported to me by more than one competent witness. It is such as may be foreseen. 'You are bringing your steam hammer to crack a nut again,' was the remark made to one of them by a friend. Admiration for his 'close reasoning, weighty argument, and high tone of mind,' is cordially expressed. He never threw a word away, always got to the core of a question, and drove his points well home. And yet he did not seem to be in the field best adapted for his peculiar gifts. He was too judicial, too reluctant to put a good face upon a bad cause, not enough of a rhetorician, and not sufficiently alert in changing front, or able to handle topics with the lightness of touch suitable to the peculiar tastes of a parliamentary Committee. Thus, though he invariably commanded respect, he failed to show the talent necessary for the more profitable, if not more exalted lines of professional success. Business still continued to present itself in the most tanta-

lising form ; it came in gushes and spurts, falling absolutely dead at one moment and then unexpectedly reviving. He had occasionally successful circuits ; but failed to step into the vacant place made by the elevation to the bench of his old tutor, Lord Field, in 1875, and gradually went his rounds less regularly. Meanwhile a good deal of business of a different kind presented itself. At the end of 1874, I find him mentioning that he had eleven cases before the Judicial Committee of the Privy Council. He appeared in a good many colonial and Indian appeals, and afterwards, as I shall have occasion to notice, in certain ecclesiastical cases. I do not think, however, that I need dwell upon this part of his career.

One remark must be made. Fitzjames was still doomed to be an illustration of the curious disproportion which may exist between a man's intrinsic power and his fitness for professional success. Still, as at college, he was distanced in the race by men greatly his inferiors in general force of mind, but better provided with the talent for bringing their gifts to market. Such a position was trying, for it was inevitable that he should be himself more conscious of his abilities than of his limitations. His incapacity for acquiring the dexterities by which men accommodate themselves to their neighbours' wants implied a tendency rather to under-estimate the worth, whatever it may be, of such dexterities. The obstacle to his success was just the want of appreciation of certain finer shades of conduct, and therefore remained unintelligible to himself. He was like a painter of very keen and yet narrowly limited vision, who could not see the qualities which lead people to prefer the work of a long-sighted man. Yet he not only never lost heart, but, so far as I can discover, was never for a moment querulous or soured. He was never for an instant in danger of becoming a 'man with a

grievance.' He thought, of course, that his views were insufficiently appreciated; but he complained, not of individuals, but of general causes which were practically irremovable, and against which it was idle to fret. If, in writing to his closest friends, he indulges in a momentary grumble over the 'bursting of a bubble,' he always adds that he is ashamed of himself for the feeling, and emphatically declares himself to be one of the happiest and most fortunate of men. When, therefore, I report his various disappointments, I must be understood to imply that they never lowered his courage even in the most trifling degree, or threw over his course more than such passing fits of shadow as even the strongest man must sometimes traverse. Nobody could have been cheerier, more resolute, or more convinced that his lines had fallen in pleasant places.

V. THE METAPHYSICAL SOCIETY

Here I shall notice some of the employments in which he found distraction from the various worries of his career. In the first place, he had a boundless appetite for books. When he returned from India he rubbed up his old classical knowledge; and, though he had far too much sense to despise the help of 'cribs,' he soon found himself able to get on pretty well without them. He mentions a number of authors, Homer, for example, and Æschylus, who supplied a motto for 'Liberty, Equality, Fraternity'; he reads Demosthenes, partly with a view to Greek law; dips into Plato and Aristotle, and is intensely interested by Cicero's 'De Natura Deorum.' He declares, as I have said, that he cared little for literature in itself; and it is no doubt true that he was generally more interested in the information to be got from books than in the mode of conveying it. This, however, increases his appetite for congenial works. He admires Gibbon enthusiastically;

he has read the 'Decline and Fall' four or five times, and is always wishing to read it again. He can imagine no happier lot than to be able to devote oneself to the completion of such a book. He found it hard, indeed, to think of a novel or a poem as anything but a trifling though fascinating amusement. He makes an unfavourable criticism upon a novel written by a friend, but adds that it is 'not really unfavourable.' 'A great novel,' he explains, 'a really lasting work of art, requires the whole time and strength of the writer, . . . and X. is too much of a man to go in for that.' After quoting Milton's 'Lycidas' and 'Christmas Hymn,' which he always greatly admired, he adds that he is 'thankful that he is not a poet. To see all important things through a magnifying glass of strange brilliant colours, and to have all manner of tunes continually playing in one's head, and I suppose in one's heart too, would make one very wretched.' A good commonplace intellect satisfied with the homely food of law and 'greedily fond of pastry in the form of novels and the like, is—well, it is at all events, thoroughly self-satisfied, which I suppose no real poet or artist ever was.' Besides, genius generally implies sensitive nerves, and is unfavourable to a good circulation and a thorough digestion. These remarks are of course partly playful, but they represent a real feeling. A similar vein of reflection appears to have suggested a comment upon Las Casas' account of Napoleon at St. Helena. It is 'mortifying' to think that Napoleon was only his own age when sent to St. Helena. 'It is a base feeling, I suppose, but I cannot help feeling that to have had such gifts and played such a part in life would be a blessing and a delight greater than any other I can think of. I suppose the ardent wish to be stronger than other people, and to have one's own will as against them, is the deepest and most general of human desires. If it were a wish

which fulfilled itself, how very strong and how very triumphant I should be;—but it does not.' For this atrocious wish, I must add, he apologises amply in a later letter. It is merely a passing velleity. In truth it represents his version of Carlyle's doctrine about the superiority of silence to speech, or rather of the active to the contemplative life. The career of a great conqueror, a great legislator, a man who in any capacity has moulded the doctrines of the race, had a charm for his imagination which he could not find in the pleasant idlers, who beguile our leisure by singing songs and telling stories.

Men who affect the religions of mankind belong rather to the active than the contemplative class. Nobody could estimate more highly the importance of philosophical speculations upon the great problems of life. To write a book which should effectively present his own answer to those problems was his permanent ambition. Even in going to India, he said, he had been moved partly by the desire of qualifying himself by fresh experience for such a work, which had been consciously before him ever since he left college. He was never able to carry out the plan which was very frequently in his thoughts. Certain articles, however, written about this time, sufficiently indicate his general conclusions, and I therefore shall here give some account of them. They were all more or less connected with that curious body called the 'Metaphysical Society.'

A description of this institution was given in the 'Nineteenth Century' for August 1885 by Mr. R. H. Hutton, who represents the discussions by an imaginary conversation between the chief debaters. Mr. Knowles prefixed a brief historical account. The Society was founded in consequence of a conversation between Tennyson and Mr. Knowles, and held its first meeting on April 21, 1869.

Fitzjames joined it after his return from India. The scheme of the founders was to provide an arena in which the most important religious problems should be discussed with the same freedom with which other problems are, or ought to be discussed in the learned and scientific societies. Perhaps some light might be thrown upon the question whether we have immortal souls, in which Tennyson was much interested. Many very distinguished men became members, and after a friendly dinner discussed papers which had been circulated for consideration. Cardinal Manning, W. G. Ward, and Father Dalgairns were the chief representatives of Catholicism; Professors Huxley, Tyndall, and W. K. Clifford of a scientific agnosticism; Mr. Frederic Harrison of Positivism; and Dr. Martineau, Mr. Ruskin, Mr. R. H. Hutton, of various shades of rational theology. There were others, such as Mark Pattison and Professor Henry Sidgwick, whom I should shrink from putting into any definite class. Mr. Gladstone, Lord Selborne, and Fitzjames may perhaps be described as intelligent amateurs, who, though occupied with more practical matters, were keenly interested in philosophical speculations. These names are enough to show that there was no lack of debating talent.

Fitzjames took the liveliest interest in these discussions, to which at various times he contributed papers upon 'necessary truths,' 'mysteries,' the 'proof of miracles,' the 'effect upon morality of a decline in religious faith,' and the 'utility of truth.' He enjoyed some vigorous encounters with various opponents: and according to Mr. Hutton his 'mighty bass' exercised 'a sort of physical authority' over his hearers. The meetings were of course strictly private; and reports of the debates, had reports been possible, would have been a breach of confidence. Yet as the

Society has excited a certain interest, I will venture to record part of my impressions. I was not a member of the Society in its early, and, as I take it, most flourishing days; and I only once, for example, heard a few words from W. G. Ward, who was then one of the more conspicuous interlocutors. But I had the honour of membership at a later period, and formed a certain estimate of the performances.

I remarked, in the first place, what was not strange, that nobody's preconceived opinions were changed, nor even, so far as I know, in the smallest degree affected by the discussions. Nor were they calculated to affect any serious opinions. Had any young gentleman been present who had sat at the feet of T. H. Green or of Professor Sidgwick, and gained a first class at either University, he would, as I always felt, have remarked that the debaters did not know what they were talking about. So far as the discussions were properly metaphysical, the remark would have been more than plausible. With certain conspicuous exceptions, which I shall not specify, it was abundantly clear that the talk was the talk of amateurs, not of specialists. I do not speak from conjecture when I say, for example, that certain eminent members of the Society had obviously never passed that 'asses' bridge' of English metaphysics, the writings of Bishop Berkeley, and considered his form of idealism, when it was mentioned, to be a novel and startling paradox. It was, I fancy, a small minority that had ever really looked into Kant; and Hegel was a name standing for an unknown region wrapped in hopeless mist. This would be enough to disenchant any young gentleman fresh from his compendiums of philosophy. Persons, he would think, in so hopeless a state of ignorance could no more discuss metaphysics to any purpose than men who had never

heard of the teaching of Newton or Darwin could discuss astronomy or biology. It was, in fact, one result of the very varying stages of education of these eminent gentlemen that the discussions became very ambiguous. Some of the commonest of technical terms convey such different meanings in different periods of philosophy that people who use them at random are easily set at hopelessly cross-purposes. . . . 'Object' and 'subject,' 'intuition,' 'experience,' and so forth, as used by one set of thinkers, are to others like words in an unknown language which they yet do not know to be unknown.

If metaphysics were really a separate and independent science upon which experts alone had a right to speak, this remark would be a sufficient criticism of the Society. It called itself metaphysical, and four out of five of its members knew nothing of metaphysics. A defence, however, might be fairly set up. Some of the questions discussed were independent of purely metaphysical inquiries. And it may be denied, as I should certainly deny, that experts in metaphysics have any superiority to amateurs comparable to that which exists in the established sciences. Recent philosophers have probably dispersed some fallacies and cleared the general issues; but they are still virtually discussing the old problems. To read Plato, for example, is to wonder almost equally at his entanglement in puerile fallacies and at his marvellous perception of the nature of the ultimate and still involved problems. If we could call up Locke or Descartes from the dead in their old state of mind, we might still be instructed by their conversation, though they had never heard of the later developments of thought. And, for a similar reason, there was a real interest in the discussion of great questions by political, or legal, or literary luminaries, who had seen men and cities and mixed in real affairs and studied life

elsewhere than in books, even though as specialists they might be probably ignorant. The difference was rather, perhaps, a difference of dialect than of substance. Their weapons were old-fashioned; but the main lines of attack and defence were the same.

Another criticism, however, was obvious, and is, I think, sufficiently indicated in Mr. Hutton's imaginary conversation. The so-called discussions were necessarily in the main a series of assertions. Each disputant simply translated the admitted facts into his own language. The argument came to saying, I say ditto to Hume, or to Comte, or to Thomas Aquinas. After a brief encounter, one man declared that he believed in God, and his opponent replied, I don't. It was impossible really to get further. It was not a difference between two advocates agreed upon first principles and disputing only some minor corollary, but a manifestation of different modes of thought, and of diverging conceptions of the world and of life, which had become thoroughly imbedded in the very texture of the speaker's mind. When it is a question of principles, which have been the battle-ground of generations; when every argument that can be used has been worked out by the subtlest thinkers of all times, a dispute can really come to nothing but saying, I am of this or that turn of mind. The real discussion of such questions is carried on by a dialectical process which lasts through many generations, and is but little affected by any particular champion. Thus the general effect necessarily was as of men each securely intrenched in his own fastness, and, though they might make sallies for a little engagement in the open, each could retreat to a position of impregnable security, which could be assaulted only by long siege operations of secular duration.

It was, I fancy, a gradual perception of these difficul-

ties which led to the decay of the Society. Meanwhile there were many pleasant meetings, and, if the discussions came to be little more than a mutual exhibition to each other of the various persons concerned, I hope and believe that each tended to the conviction that his antagonist had neither horns nor hoofs. The discussions, moreover, produced a considerable crop of Magazine articles; and helped to spread the impression that certain very important problems were being debated, upon the decision of which immense practical consequences might depend. It might be curious to inquire how far the real interest in these arguments extended, and whether the real state of the popular mind is a vivid interest in the war between scientific theories and traditional beliefs, or may more fitly be described as a languid amusement in outworn problems. Fitzjames, at any rate, who always rejoiced, like Cromwell's pikemen, when he heard the approach of battle, thought, as his letters show, that the forces were gathering on both sides and that a deadly struggle was approaching. The hostility between the antagonists was as keen as it had been in the sixteenth and seventeenth centuries, though covered for the present by decent pretences of mutual toleration. He contributed during this period a paper upon Newman's 'Grammar of Assent' to 'Fraser's Magazine'; and he wrote several articles, partly the product of the Metaphysical Society, in the 'Contemporary Review' and the 'Nineteenth Century,' both under the editorship of Mr. Knowles.

I shall speak of them so far as they illustrate what was, I think, his definite state of mind upon the matters involved. His chief encounters were with Cardinal Manning ('Contemporary Review,' March and May 1874), and with W. G. Ward ('Contemporary Review,' December 1874), and with Mr. Gladstone ('Nineteenth Century,'

April 1877). The controversy with Mr. Gladstone turned upon certain points raised in Sir G. C. Lewis's book upon 'Authority in Matters of Opinion.' The combatants were so polite, and their ultimate difference, which was serious enough, was so mixed up with discussions of Lewis's meaning, that a consideration of the argument would be superfluous. The articles directed against Manning, to which his antagonist replied in succeeding numbers of the Review, were of more interest. The essence of Fitzjames's argument was a revival of his old challenge to Newman. He took occasion of a pamphlet by Manning to ask once more the very pertinent question: You claim to represent an infallible and supernatural authority which has indefeasible rights to my allegiance; upon what grounds, then, is your claim based? To establish it, you have first to prove that we have such a knowledge of God as will enable us to draw special inferences as to particular institutions; next, that Christ was an incarnation of that God; then, that Christ founded a particular institution; and, finally, that the institution was identical with the Catholic Church. The argument covers a very wide ground; and I think that Fitzjames never wrote with more concentrated vigour. I have a certain difficulty in speaking of Manning's reply; because it has apparently come to be understood that we are bound to pay insincere compliments to a good man's understanding when he disagrees with our views. Now I am quite willing to admit that Manning was a most amiable and well-meaning person; but I am unable to consider him seriously as a reasoner. The spectacle which he presented on this occasion, at least, was that of a fluent popular preacher, clutched by a powerful logician, and put into a witness-box to be thoroughly cross-examined. The one quality I can discover in his articles is a certain dexterity in evading plain issues and covering inconsis-

tencies by cheap rhetoric. The best suggestion to be made on his side would be that he was so weak an advocate that he could not do justice to the argument.

The controversy with W. G. Ward was of different character. Ward, with his usual courtesy to intellectual antagonists, had corresponded with Fitzjames, in whose writings he was much interested. He now challenged his opponent to republish a paper upon 'necessary truths,' which had been read to the Metaphysical Society. Fitzjames accordingly reproduced it with a comment, and Ward replied in the next number. Ward was undoubtedly a man of much dialectical ability, and, I think, in some directions more familiar than his opponent with metaphysical subtleties. Fitzjames considered himself to have had the best of the argument, and says that the 'Tablet' admitted his superiority. I presume, however, that Ward would have returned the opposite verdict. I am the less inclined to pronounce any opinion because I believe that most competent people would now regard the whole discussion as turning upon a false issue. In fact, it was the old question, so eagerly debated by J. S. Mill and Ward, as to the existence of intuitions and 'necessary truths.' Neither Mill's empiricism nor Ward's belief in intuitions 'in the sense required' would, I fancy, be now regarded as satisfactory. I think that Fitzjames was greatly superior in vigour of expression; but the argument is not one to be answered by a single Yes or No.

I cannot even touch such controversies here. My only desire is to indicate Fitzjames's intellectual attitude. It is sufficiently manifest in these articles. He argues that Ward's position is really suicidal. Certain things are pronounced by Ward to be impossible even for Omnipotence —as, for example, to make a trilateral figure which shall not be also triangular. Carry out this view, says Fitzjames,

and you make our conceptions the measure of reality. Mysteries, therefore, become nonsense, and miracles an impossibility. In fact, Ward's logic would lead to Spinoza, not to the deity of Catholic belief. Ward might retort that Fitzjames's doctrines would lead to absolute scepticism or atheism. Fitzjames, in fact, still accepts Mill's philosophy in the fullest sense. All truth, he declares, may be reduced to the type, 'this piece of paper is blue, and that is white.' In other words, it is purely empirical and contingent. The so-called intuitive truths 'two and two make four' only differ from the truth, 'this paper is white' in that they are confirmed by wider experience. All metaphysical verbiage, says Fitzjames, whether Coleridge's or Ward's, is an attempt to convert ignorance into superior kind of knowledge, by 'shaking up hard words in a bag.' Since all our knowledge is relative to our faculties, it is all liable to error. All our words for other than material objects are metaphors, liable to be misunderstood—a proposition which he confirms from Horne Tooke's nominalism. All our knowledge, again, supposes memory which is fallible. All our anticipations assume the 'uniformity of nature,' which cannot be proved. And, finally, all our anticipations also neglect the possibility that new forces of which we know nothing may come into play.

Such convictions generally imply agnosticism as almost a necessary consequence. They might seem to show that what I have called the utilitarian element in his thoughts had effectually sapped the base of the Puritanic element. I certainly think that this was to some extent the case. Fitzjames had given up the belief that the Gospel narrative could be proved after the Paley method, and that was the only method which, according to him, was legitimate. He had, therefore, ceased to believe in the historical truth of Christianity. After going to India he did not take part in

church services, and he would not, I am sure, have used such language about his personal convictions as he used in all sincerity at the time of the 'Essays and Reviews' controversy. In short, he had come to admit that no belief in a supernatural revelation could be maintained in the face of modern criticism. He often read Renan with great interest; Renan, indeed, seemed to him to be sentimental, and too favourable to the view that a religion might have a certain artistic value independent of its truth. But he was as far as Renan or as the most thorough-going of historical critics from believing in the divinity of Christ or the truth of the Christian inspiration.

But, in spite of this, he still held to his version of the doctrine of probability. It is summed up in Pascal's famous *il faut parier*. We can neither put aside the great religious questions nor give a positive answer to them. We must act on the hypothesis that one answer or the other is true; but we must not allow any juggling to transmute a judgment of probability into an undoubting conviction of truth. There are real arguments on both sides, and we must not ignore the existence of either. In the attack upon Manning he indicates his reasons for believing in a God. He accepts the argument from final causes, which is, of course, the only argument open to a thorough empiricist, and holds that it is not invalidated, though it is, perhaps, modified by recent scientific inquiries. It is probable, therefore, that there is a God, though we cannot regard the point as proved in such a sense as to afford any basis for expecting or not expecting a revelation. On the contrary, all analogy shows that in theological, as in all other matters, the race has to feel its way gradually to truth through innumerable errors. In writing to a friend about the Manning article he explains himself more fully. Such articles, he says, give a disproportionate im-

portance to the negative side of his views. His positive opinions, if 'vague, are at least very deep.' He cannot believe that he is a machine; he believes that the soul must survive the body; that this implies the existence of God; that those two beliefs make 'the whole difference between the life of a man and the life of a beast.' The various religions, including Christianity, try to express these beliefs, and so long as they are honestly and simply believed are all good in various degrees. But when the creeds are held on the ground of their beauty or utility, not on the ground of their demonstrable truth, they become 'the most corrupt and poisonous objects in the world, eating away all force, and truth, and honour so far as their influence extends.' To propose such beliefs on any ground but the ground of truth, 'is like keeping a corpse above ground because it was the dearest and most beloved of all objects when it was alive.' He does not object to authority as such. He has no objection to follow a doctor's directions or to be loyal to an official superior, and would equally honour and obey anyone whom he could trust in religious questions. But he has never found such a guide. 'A guide is all very well if he knows the way, but if he does not, he is the most fatal piece of luggage in the world.'

To use his favourite language, therefore, he still regarded a 'sanction' as absolutely necessary to the efficacy of moral or religious teaching. His constant criticism upon positivists and agnostics is that their creeds afford no satisfactory sanction. They cannot give to the bad man a reason for being good. But he was equally opposed to sham sanctions and sham claims to authority. As a matter of fact, his attack upon such claims led most people to classify him with the agnostics. Nor was this without reason. He differed less in reality, I think, from

Professor Huxley or Mr. Harrison than from Ward or Cardinal Manning. In the arguments at the 'Metaphysical Society' he was on the left wing as against both Catholics and the more or less liberal theologians, whose reasoning seemed to him hopelessly flimsy. His first principles in philosophy were those of the agnostics, and in discussing such principles he necessarily took their part. He once told Mr. Harrison that he did not wish to have any more controversies with him, because dog should not fight dog. He sympathised as heartily as any man could do in the general spirit of rationalism and the desire that every belief should be the outcome of the fullest and freest discussions possible. Every attempt to erect a supernatural authority roused his uncompromising antagonism. So long as people agreed with him upon that point, they were at one upon the main issue. His feeling was apparently that expressed in the old phrase that he would go with them as far as Hounslow though he did not feel bound to go to Windsor.

Writing a few months later to the same correspondent, he observes that the difference between them is partly a difference of character. Circumstances have developed in him a 'harsh and combative way of thinking and writing in these matters.' Yet he had felt at times that it required so much 'effort of will to face dreary and unpleasant conclusions' that he could hardly keep his mind in the direction, or what he thought the direction, of truth without much pain. He could happily turn to neutral subjects, and had (I rather doubt the accuracy of the phrase) 'a peculiarly placid turn of mind.' He admits that a desire for knowledge is right and inevitable, but all experience shows our fallibility and the narrow limits of our knowledge. We know, however, that 'we are bound together by innumerable ties, and that almost every act of

our lives deeply affects our friends' happiness.' The belief again (in the sense always of belief of a probability) in the fundamental doctrines of God and a future state imposes an 'obligation to be virtuous, that is, to live so as to promote the happiness of the whole body of which I am a member. Is there,' he asks, 'anything illogical or inconsistent in this view?'

At any rate, it explains his 'moral indignation' against Roman Catholicism. In the first place, Catholicism claims 'miraculous knowledge' where there should be an honest confession of ignorance. This original vice has made it 'to the last degree dishonest, unjust, and cruel to all real knowledge.' It has been the enemy of government on rational principles, of physical science, of progress in morals, of all knowledge which tends to expose its fundamental fallacies. Its theological dogmas are not only silly but immoral. The doctrines of hell, purgatory, and so forth, are not 'mysteries,' but perfectly unintelligible nonsense, first representing God as cruel and arbitrary, and then trying to evade the consequence by qualifications which make the whole 'a clumsy piece of patchwork.' God the Father becomes a 'stern tyrant,' and God the Son a 'passionate philanthropist.' Practically his experience has confirmed this sentiment. He does 'really and truly love, at all events, a large section of mankind, though pride and a love of saying sharp things have made me, I am sorry to say, sometimes write as if I did not,' and whatever he has tried to do, he has found the Roman Catholic Church 'lying straight across his path.' Men who are intellectually his inferiors and morally 'nothing at all extraordinary,' have ordered him to take for granted their views upon law, morals, and philosophy, and when he challenges their claim can only answer that he is wicked for asking questions.

He fully admits the beauty of some of the types of character fostered by the Roman Catholic Church, although they imply a false view of certain Cardinal points of morality, and argues that to some temperaments they may have a legitimate charm. But that does not diminish the strength of his convictions that the dogmas are radically absurd and immoral, or that the whole claim to authority is opposed to all rational progress. In the Manning articles he ends by accepting the issue as between the secular view and the claims of a priesthood to authority. In the last resort it is a question whether State or Church shall rule. He prefers the State, because it has more rational aims, uses more appropriate means, has abler rulers, produces verifiable results, and has generally 'less nonsense about it.' The clergy are 'male old maids'; often very clever, charitable, and of good intentions, but totally devoid of real wisdom or force of mind or character, and capable on occasions of any amount of spite, falsehood, and 'gentle cruelty.' It is impossible to accept the claims of the priesthood to supernatural authority. If ultimately a division has to be made, human reason will have to decide in what shape the legal sanction, 'or, in other words, disciplined and systematic physical force,' shall be used. We shall then come to the *ultima ratio*, after all compromises have been tried. There may be an inevitable conflict. The permanent principles of nature and society, which are beyond all laws, will decide the issue. But Manning's is a mere quack remedy.

This represents one aspect of Fitzjames's character. The struggle which is going on is a struggle between priest and layman, mysticism and common sense, claims to supernatural authority and clear downright reasoning from experience, and upon all grounds of theory and practice he is unequivocally on the side of reason. I need

only add a remark or two. In the first place, I think that he never materially altered this position, but he was rather less inclined after a time to take up the cudgels. He never lost a conviction of the importance of his 'sanction.' He always held to the necessity of some kind of religious belief, although the precise dogma to be maintained became rather more shadowy. But, as the discussion went on, he saw that in practice his own standing-ground was becoming weaker. The tendency of men who were philosophically on his own side was to regard the whole doctrine of a future life as not only beyond proof but beyond all legitimate speculation. Hence he felt the force of the dilemma to which he was exposed. A genuine religion, as he says in a remarkable letter, must be founded, like all knowledge, on facts. Now the religions which include a theology rest on no facts which can stand criticism. They are, therefore, doomed to disappear. But the religions which exclude theology—he mentions Buddhism and Positivism as examples—give no adequate sanction. Hence, if theology goes, the moral tone of mankind will be lowered. We shall become fiercer, more brutal, more sensual. This, he admits, is a painful and even a revolting conclusion, and he therefore does not care to enlarge upon it. He is in the position of maintaining that a certain creed is at once necessary to the higher interests of mankind, and incapable of being established, and he leaves the matter there.

I may just add, that Fitzjames cared very little for what may be called the scientific argument. He was indifferent to Darwinism and to theories of evolution. They might be of historical interest, but did not affect the main argument. The facts are here; how they came to be here is altogether a minor question. Oddly enough, I find him expressing this opinion before the 'Origin of Species' had

brought the question to the front. Reviewing General Jacob's 'Progress of Being' in the 'Saturday Review' of May 22, 1858, he remarks that the argument from development is totally irrelevant. 'What difference can it make,' he asks, 'whether millions of years ago our ancestors were semi-rational baboons?' This, I may add, is also the old-fashioned empirical view. Mill, six years later, speaks of Darwin's speculations, then familiar enough, with equal indifference. In this, as in other important matters, Fitzjames substantially adhered to his old views. To many of us on both sides theories of evolution in one form or other seem to mark the greatest advance of modern thought, or its most lamentable divergence from the true line. To Fitzjames such theories seemed to be simply unimportant or irrelevant to the great questions. Darwin was to his mind an ingenious person spending immense labour upon the habits of worms, or in speculating upon what may have happened millions of years ago. What does it matter? Here we are—face to face with the same facts. Fitzjames, in fact, agreed, though I fancy unconsciously, with Comte, who condemned such speculations as 'otiose.' To know what the world was a billion years ago matters no more than to know what there is on the other side of the moon, or whether there is oxygen in the remotest of the fixed stars. He looked with indifference, therefore, upon the application of such theories to ethical or political problems. The indication is, I think, worth giving; but I shall say nothing as to my own estimate of the importance of the theories thus disregarded.

VI. THE CRIMINAL CODE

I return to the sphere upon which Fitzjames spent his main energies, and in which, as I think, he did his most

lasting work. Three months of the spring of 1874 had been spent in consolidating the laws relating to the government of India. About the same time, I may observe parenthetically, he had a scheme for publishing his speeches in the Legislative Council; and, at one period, hoped that Maine's might be included in the volume. The publishers, however, declined to try this experiment upon the strength of the English appetite for Indian matters; and the book was dropped. He returned for a time to the Contract Law; but must soon have given up the plan. He writes on September 23, 1874, that Macmillan has applied to him for a new edition of his 'Criminal Law'; and that he has been reading for some time with a view to it. He has been labouring through 3,000 royal 8vo. pages of 'Russell on Crimes.' They are full of irrelevant illustrations; and the arrangement is 'enough to make one go crazy.' The 'plea of *autrefois acquit* comes at the end of a chapter upon burglary'—a fact to make even the ignorant shudder! He would like to put into his book a penal code, a code of criminal procedure, and an evidence code. 'I could do it too if it were not too much trouble, and if a large part of the law were not too foolish to be codified.' He is, however, so convinced of the impracticability of parliamentary help or of a commission that he is much inclined to try. A fortnight later (October 8) he has resolved to convert his second edition into a draft penal code and code of criminal procedure.

The work grew upon his hands.[1] He found crudities in the earlier work and a difficulty in stating the actual law from the absence of any adequate or tolerably arranged text-book. Hence he resolved to make such a book for himself, and to this task he devoted nearly all of what he

[1] See prefaces to *History of the Criminal Law* and to the *Digest of the Criminal Law*.

humorously called his leisure during the later part of 1874 and the whole of 1875 and 1876. Moreover, he thought for a time that it would be desirable to add full historical notes in order to explain various facts of the law. These, however, were ultimately set aside and formed materials for his later history. Thus the book ultimately took the form simply of a 'Digest of the Criminal Law,' with an explanatory introduction and notes upon the history of some of the legal doctrines involved. It was published in the spring of 1877,[1] and, as he says in a letter, it represented the hardest work he had ever done.

It coincided in part with still another hard piece of work. In December 1875 he was appointed Professor of Common Law at the Inns of Court. He chose for the subject of his first course of lectures the law of evidence. His Indian Code and the bill introduced by Coleridge in 1873 had made him thoroughly familiar with the minutiæ of the subject. Here again he was encountered by the same difficulty in a more palpable shape. A lecturer naturally wishes to refer his hearers to a text-book. But the only books to which he could refer his hearers filled thousands of pages, and referred to many thousands of cases. The knowledge obtained from such books and from continual practice in court may ultimately lead a barrister to acquire comprehensive principles, or at least an instinctive appreciation of their application in particular cases. But to refer a student to such sources of information would be a mockery. He wants a general plan of a district, and you turn him loose in the forest to learn its paths by himself. Fitzjames accordingly set to work to supply the want by himself framing a 'digest' of the English Law of Evidence. Here was another case of 'boiling down,' with the difficulty that he has to expound a

[1] The introduction is dated April 1877.

law—and often an irrational law—instead of making such a law as seems to him expedient. He undoubtedly boiled his materials down to a small size. The 'Digest' in a fourth edition contains 143 articles filling 155 moderate pages, followed by a modest apparatus of notes. I believe that it has been found practically useful, and an eminent judge has told me that he always keeps it by him.

Fitzjames held his office of professor until he became a judge in 1879. He had certainly one primary virtue in the position. He invariably began his lecture while the clock was striking four and ceased while it was striking five. He finally took leave of his pupils in an impressive address when they presented him with a mass of violets and an ornamental card from the students of each inn, with a kindly letter by which he was unaffectedly gratified. His class certainly had the advantage of listening to a teacher who had the closest practical familiarity with the working of the law, who had laboured long and energetically to extract the general principles embedded in a vast mass of precedents and technical formulas, and who was eminently qualified to lay them down in the language of plain common sense, without needless subtlety or affectation of antiquarian knowledge. I can fully believe in the truth of Sir C. P. Ilbert's remark that whatever the value of the codes in other respects, their educational value must be considerable. They may convince students that law is not a mere trackless jungle of arbitrary rules to be picked up in detail, but that there is really somewhere to be discovered a foundation of reason and common sense. It was one of Fitzjames's favourite topics that the law was capable of being thus exhibited; and that fifty years hence it would be a commonplace that it would be treated in a corresponding spirit, and made a beautiful and instructive branch of science.

The publication of these two books marked a rise in his general reputation. In the introduction to the 'Digest of the Criminal Law' he refers to the rejection of his 'Homicide Bill.' The objections then assigned were equivalent to a challenge to show the possibility of codifying. He had resolved to show the possibility by actually codifying 'as a private enterprise.' The book must therefore be regarded as 'an appeal to the public at large' against the judgment passed upon his undertaking by Parliament and by many eminent lawyers. He does not make the appeal 'in a complaining spirit.' The subject, he thinks, 'loses nothing by delay,' and he hopes that he has improved in this book upon the definitions laid down in his previous attempts. In connection with this I may mention an article which he contributed to the 'Nineteenth Century' for September 1879 upon a scheme for 'improving the law by private enterprise.' He suggests the formation of a Council of 'legal literature,' to co-operate with the Councils for law-reporting and for legal education. He sketches various schemes, some of which have been since taken up, for improving the law and legal knowledge. Digests of various departments of the law might be of great service as preparing the way for codification and illustrating defects in the existing state of the law. He also suggests the utility of a translation of the year-books, the first sources of the legal antiquary; a continuation of the State Trials, and an authentic collection of the various laws of the British Empire. Sir C. P. Ilbert has lately drawn attention to the importance of the last; and the new State Trials are in course of publication. The Selden Society has undertaken some of the antiquarian researches suggested.

Meanwhile his codification schemes were receiving a fresh impulse. When preparing the 'Digest,' he reflected

that it might be converted into a penal code. He communicated this view to the Lord Chancellor (Cairns) and to Sir John Holker (afterwards Lord Justice Holker), then Attorney-General. He rejoiced for once in securing at last one real convert. Sir John Holker, he says, appreciated the scheme with 'extraordinary quickness.' On August 2, 1877, he writes that he has just received instructions from the Lord Chancellor to draw bills for a penal code, to which he was soon afterwards directed to add a code of criminal procedure. He set to work, and traversed once more the familiar ground. The 'Digest,' indeed, only required to be recast to be converted into a code. The measure was ready in June and was introduced into Parliament by Sir John Holker in the session of 1878. It was received favourably, and he reports that the Chancellor and the Solicitor-General, as well as the Attorney-General, have become 'enthusiastic' in their approbation. The House of Commons could not spare from more exciting occupations the time necessary for its discussion. A Commission, however, was appointed, consisting of Lord Blackburn, Mr. Justice Barry, Lord Justice Lush, and himself to go into the subject. The Commission sat from November 1878 to May 1879, and signed a report, written by Fitzjames, on June 12, 1879. They met daily for over five months, discussed 'every line and nearly every word of every section,' carefully examined all the authorities and tested elaborately the completeness of the code. The discussions, I gather, were not so harmonious as those in the Indian Council, and his letters show that they sometimes tried his temper. The ultimate bill, however, did not differ widely from the draft produced by Fitzjames, and he was glad, he says,[1] that these thorough discussions brought to light no serious defect in

[1] Preface to *History of Criminal Law.*

the 'Digest' upon which both draft-codes were founded. The report was too late for any action to be taken in the session of 1879. Cockburn wrote some observations, to which Fitzjames (now a judge) replied in the 'Nineteenth Century' of January 1880. He was studiously courteous to his critic, with whom he had some agreeable intercourse when they went the next circuit together. I do not know whether the fate of the measure was affected by Cockburn's opinion. In any case the change of ministry in 1880 put an end to the prospects of the code for the time. In 1882, to finish the story, the part relating to procedure was announced as a Government measure in the Queen's speech. That, however, was its last sign of life. The measure vanished in the general vortex which swallows up such things, and with it vanished any hopes which Fitzjames might still entertain of actually codifying a part of English law.

VII. ECCLESIASTICAL CASES

Fitzjames's professional practice continued to be rather spasmodic; important cases occurring at intervals, but no steady flow of profitable work setting in. He was, however, sufficiently prosperous to be able to retire altogether from journalism. The 'Pall Mall Gazette' during his absence had naturally got into different grooves; he had ceased to sympathise with some of its political views; and as he had not time to throw himself so heartily into the work, he could no longer exercise the old influence. A few articles in 1874 and 1875 were his last contributions to the paper. He felt the unsatisfactory nature of the employment. He calculates soon afterwards that his collected works would fill some fifty volumes of the size of 'Liberty, Equality, Fraternity,' and he is anxious to apply

his energy to less ephemeral tasks. His profession and his codes gave him work enough.

His most remarkable professional employment arose out of certain ecclesiastical cases. Sir Francis Jeune, who was concerned in some of them, has kindly described his impressions to me. Fitzjames's connection with certain prosecutions directed against the ritualists arose from a conversation between Sir F. Jeune, who was then junior counsel to the English Church Union, and its secretary the late Sir Charles Young. A counsel was required who should unite 'plenty of courage' to an intimate knowledge of the Criminal Law and power of appreciating the results of historical research. Fitzjames 'combined these requirements in a wonderful way.' Sir F. Jeune makes reservations similar to those which I have had to notice in other applications, as to Fitzjames's want of the subtlety and closeness of reasoning characteristic of the greatest lawyers. He saw things 'rather broadly,' and his literary habits tended to distract him from the precise legal point. 'I always thought of his mind,' says Sir Francis, 'as of a very powerful telescope pulled out just a little too much.' The sharp definitions, perceptible sometimes to inferior minds, were in his a little blurred. These peculiarities, however, were even advantages in this special class of business. The precedents and principles involved were rather vague, and much of the work within the province rather of the historian than of the lawyer. It involved questions as to the spirit in which the articles and rubrics had been composed by their authors. The requirement of 'courage' was amply satisfied. 'I shall never forget,' says Sir Francis, 'one occasion' in which Fitzjames was urged to take a course which he thought improper, though it was not unnaturally desired by irritated clients fighting against what they

considered to be harsh legal restraint. Fitzjames at once made it clear that no client should make him deviate from the path of professional propriety. He had, in fact, indignantly refused, as I find from one of his letters, to adopt a position which implied distrust of the impartiality of the judges.

Of the cases themselves I must say generally that they often provoked a grim smile from the advocate. When, in earlier days, he had defended Dr. Williams he had spoken not merely as an advocate, but as a man who had felt that he was vindicating the intellectual liberty of the Church of which he was a member. The cases in which he was now concerned could appeal to him only as an advocate. The first in which he appeared, February 16, 1876, was sufficiently grotesque.[1] A clergyman had refused to administer the sacrament to a gentleman who had published a volume of 'Selections' from the Bible—implying, it was suggested, that he did not approve of the part not selected—and who had his doubts about the devil. The clergyman was reported to have said, 'Let him sit down and write a calm letter, and say he believes in the devil, and I will give him the sacrament.' The only legitimate causes in a legal sense for refusing the sacrament would be that a man was an 'open and notorious evil liver,' or a 'common and notorious depraver of the Book of Common Prayer.' The Court of Arches apparently held that the gentleman came under this description; but the Judicial Committee of the Privy Council, after hearing Fitzjames, decided that he did not. A man might disbelieve in the devil, without being a 'notorious evil liver,' however irrational may be his scepticism.

The most important of his appearances was in the

[1] 'Jenkins *v.* Cook,' *Law Reports*, Probate Division, i. 80–107.

Folkestone case.[1] His 'opening argument, and even more his reply' (upon the appeal), 'were masterpieces, and they obtained from the Privy Council a judgment in very marked contrast to those which had preceded it.' His argument, as Sir F. Jeune thinks, induced the Privy Council to some extent 'to retrace, or at least seem to retrace, its steps.' The judgment sanctioned what is known as the 'Eastern position,' and certain other ritualistic practices. In another case,[2] it was decided, in accordance with Fitzjames's argument, that a sculptured representation of the Crucifixion, as opposed to the exhibition of a crucifix, was lawful.

Fitzjames, in his letters at this time, gives his own view pretty emphatically. While you, he says to Lord Lytton, (I shall speak of this correspondence directly) 'are fighting with famine in India, I am struggling over albs and chasubles, and superstitions not more reasonable than those about Vishnu and Shiva.' 'I have been passionately labouring for the last nine days' (he says a little later in regard to the Folkestone case) 'for the liberty of the clergy to dress themselves in certain garments and stand in particular attitudes. All my powers of mind and body were devoted to these important objects, till I dreamed of chasubles and wafers.' Some years ago, he remarks, certain natives of India, having an interest in an appeal to the Privy Council, caught an idiot and slew him on a hill-top as a sacrifice to the deity who presides over the deliberations of that body. A being capable of being propitiated in that fashion might take an interest in squabbles over wafers and chasubles. 'It is a foolish subject to joke about,' he adds, 'for beyond all manner of

[1] 'Clifton *v.* Ridsdale,' *Law Reports*, Probate Division, i. 316–367; and ii. 276–353.

[2] 'Hughes *v.* Edwards,' *Law Reports*, Probate Division, ii. 361–371.

doubt my clients' real object is to get as much idolatry as possible into the poor old Church of England, and I believe that they will sooner or later succeed in making the whole thing look absurd and breaking it up.' Whether that would be a good thing or not is a matter upon which he feels unable to make up his mind.

Amid these various occupations, Fitzjames, however fully occupied, showed no symptoms of being over-worked or over-worried. He had, in a remarkable degree, the power of taking up and dismissing from his mind the matters in each of which he was alternately absorbed. He could throw himself into codifying, or speculating, or getting up briefs at any moment and in any surroundings, and dismiss each occupation with equal readiness. He found time, too, for a good deal of such society as he loved. He heartily enjoyed little holiday tours, going occasionally to the Continent, and more frequently to some of the friends to whom he always adhered and to whom he could pour out his opinions frankly and fully. Maine was almost his next-door neighbour, and frequently consulted him upon Indian matters. He took his Sunday walks with Carlyle; and he went to stay with Froude, in whose society he especially delighted, in a summer residence in Devonshire. He frequently visited his old friend Venables in Wales, and occasionally spent a few days with members of his own family. Although ready to take up a bit of work, literary or professional, at any moment, he never appeared to be preoccupied; and could discourse with the utmost interest upon his favourite topics, though he sometimes calls himself 'unsociable'—by which he apparently means that he cared as little as might be for the unsociable kind of recreation. He was a member of the 'Cosmopolitan'; he belonged also to 'The Club' and to the 'Literary Society,' and he heartily enjoyed

meeting distinguished contemporaries. In 1874 he paid a visit to his friends the Stracheys, who had taken for the summer a house at Anaverna, near Ravensdale, Co. Louth, in Ireland. He liked it so much that he resolved to become their successor. He took the house accordingly, and there spent his holidays in the summer of 1875 and the succeeding years so long as his strength lasted.

Anaverna is a village about five miles of Dundalk, at the foot of a range of grassy hills rising to a height of some 1,700 feet, within a well-wooded country below. The house stood in grounds of about sixty acres, including a wood and traversed by a mountain-stream. Fitzjames enjoyed walks over the hills, and, in the last years, drives in the lower country. To this place, and the quiet life there, Fitzjames and his family became most warmly attached. His letters abound in enthusiastic remarks about the scenery, and describe his pleasure in the intercourse with neighbours of all classes, and in the visits of old friends who came to stay with him. A good deal of his later writing was done there.

VIII. CORRESPONDENCE WITH LORD LYTTON

I have now to speak of a new friendship which played a very important part in his life from this time. In January 1876, Lord Lytton[1] was appointed Governor-General of India. In February, Fitzjames dined in his company at Lord Arthur Russell's. They went afterwards to the 'Cosmopolitan,' and by the end of the evening had formed a close friendship, which was only to end with their lives. Some of Fitzjames's friends were surprised at the singular strength of attachment between two men so conspicuously different in mind and character. Some contrasts, as everyone observes, rather facilitate than

[1] B. November 8, 1831, d. November 24, 1891.

impede friendship; but in this case the opposition might seem to be too decided. The explanation is not, I think, difficult. Lord Lytton, in the first place, was a singularly charming person. He was not only a delightful companion, but he was delightful because obviously open-hearted, enthusiastic, and exceedingly affectionate. To such charms Fitzjames was no more obdurate than his fellows. Lord Lytton, it is true, was essentially a man of letters; he was a poet and a writer of facile and brilliant prose; and Fitzjames acknowledged, or rather claimed, a comparative insensibility to excellence of that kind. Upon some faults, often combined with a literary temperament, he was perhaps inclined to be rather too severe. He could feel nothing but hearty contempt for a man who lapped himself in æsthetic indulgences, and boasted of luxurious indifference to the great problems of the day. Such an excess of sensibility, again, as makes a man nervously unwilling to reveal his real thoughts, or to take part in a frank discussion of principles, would be an obstacle to intimacy. Fitzjames might not improbably decline to take the trouble necessary to soothe the vanity, or thaw the shyness of such a person, and might perhaps too hastily set him down for a coward or a 'poor creature.' But when, as was often the case, the sensitive person was encouraged to openness by Fitzjames's downright ways, the implied compliment would be fully recognised. Lord Lytton, as an accomplished man of the world, was of course free from any awkward bashfulness; and at the very first interview was ready to meet Fitzjames half-way. His enthusiasm accordingly met with a rapid return. One of Fitzjames's favourite assertions was that nobody but a humbug could deny the pleasantness of flattery; and, in fact, I think that we all like it till we discover it to be flattery. What he really meant was that he liked

downright, open-hearted and perfectly sincere praise; and both parties to this alliance could praise each other both sincerely and heartily.

There was, however, another reason which helps to explain the great value which Fitzjames attached from the first to this intercourse. It comes out in almost every letter in his part of their correspondence. Fitzjames calls himself 'self-contained'; and the epithet is quite appropriate if it is taken as not implying any connotation of real selfishness. He was, that is, sufficient for himself; he was contented so long as he could feel, as he always had a right to feel, that he was doing his work thoroughly to the very best of his abilities. He could dispense with much appreciation from outside, though it was unaffectedly welcome when it came from competent persons. He had too much self-reliance to be dependent upon any endorsement by others. But, though this might be perfectly true, he was at bottom sensitive enough, and it was also true that he felt keenly certain consequences of his position. His professional career, as I have so often said, had been a series of tantalising half-successes; he was always being baffled by cross winds at the harbour-mouth. Although his courage never failed for an instant, he could not but have a certain sense of isolation or want of support. This was especially true of the codification schemes which occupied so much of his thought. He had been crying in the market-place and no man heeded him. Yet his voice was powerful enough morally as well as physically. He had the warmest of friends. Some of them were devoted to pursuits which had nothing to do with law and could only express a vague general sympathy. They admired his general vigour, but were not specially interested in the ends to which it was applied. Others, on the contrary, were politicians and lawyers who could have given

him effectual help. But they almost unanimously refused to take his plans seriously. The British barrister and member of Parliament looked upon codification as at best a harmless fancy. 'A jurist,' Fitzjames sometimes remarks in a joke, which was not all joking, is a 'fool who cannot get briefs.' That represents the view generally taken of his own energy. It was possibly admirable, certainly unobjectionable, but not to the purpose. The statesman saw little chance of gaining votes by offers of a code, and the successful lawyer was too much immersed in his briefs to care about investigating general principles of law. At last, as I have said, Fitzjames got a disciple or two in high places, but even then his most telling argument seems to have been less that codification was good in itself than that success in passing a code would be a feather in the Government cap. Up to 1876 he had not even got so far. Russell Gurney, indeed, had helped him, and Coleridge had shown an interest in his work; but the general answer to his appeals was even more provoking than opposition; it was the reply of stolid indifference.

In India his hands had been free. There he had really done a genuine and big stroke of work. The contrast to English methods, and the failure of his attempts to drive his ideas into the heads of any capable allies, had strengthened his antipathy to the home system, though it had not discouraged him from work. But now at last he had made a real and enthusiastic convert; and that convert a Governor-General, who would be able to become an effective agent in applying his ideas. The longing for real sympathy, scarcely perhaps admitted even to himself, had been always in existence, and its full gratification stimulated his new friendship to a rapid growth. Lord Lytton left for India on March 1, 1876. Before he left, Fitzjames

had already written for him an elaborate exposition of the Indian administrative system, which Lytton compared to a 'policeman's bull's-eye.' It lighted up the mysteries of Indian administration. Fitzjames writes to him on the day of his departure: 'You have no conception of the pleasure which a man like me feels in meeting with one who really appreciates and is willing to make use of the knowledge which he has gained with great labour and much thought. I have had compliments of all sorts till I have become almost sick of them, but you have paid me the one compliment which goes straight to my heart—the compliment of caring to hear what I have to say and seeing the point of it.' 'You have managed,' he afterwards says, 'to draw me out of my shell as no one else ever did.' Three years later he still dwells upon the same point. You, he says (January 27, 1879) 'are the only prominent public man who ever understood my way of looking at things, or thought it in the least worth understanding.' Others have taken me for a clever fellow with dangerous views.' 'You have not only understood me, but, in your warm-hearted, affectionate way, exaggerated beyond all measure the value of my sayings and doings. You have not, however, exaggerated in the least my regard for you, and my desire to be of service to you.'

These words give the key-note of the correspondence, and may help to explain the rapid growth and singular strength of the friendship between two men whose personal intercourse had been limited to less than a month. Fitzjames threatened, and the 'threat' was fully executed, to become a voluminous correspondent. I cannot say, indeed, which correspondent wrote most frankly and abundantly. The letter from which I have quoted the last passage is in answer to one from Lord Lytton, filling thirty sheets, written, as he says, 'in a hurry,' but, as

Fitzjames declares, with 'only two slips of the pen, without an "erasure," in a handwriting which fills me with helpless admiration,' and in a style which cannot be equalled by any journalist in England. 'And this you do by way of amusing yourself while you are governing an empire in war-time,' and yet compliment me for writing at leisure moments during my vacations! Fitzjames, however, does his best to keep pace with his correspondent. Some of his letters run to fourteen and fifteen sheets; and he snatches intervals from worrying labours on his codes, or on the bench or on commissions, or sitting up at nights, to pour out discourses which, though he wrote very fast, must often have taken a couple of hours to set down. The correspondence was often very confidential. Some of Lytton's letters had to be kept under lock and key or put in the fire for safer guardianship. Lytton had a private press at which some of his correspondent's letters were printed, and Fitzjames warns him against the wiles of editors of newspapers in a land where subordinates are not inaccessible to corruption. It would, however, not be in my power, even if I had the will, to reveal any secrets of state. Fitzjames's letters indeed (I have not seen Lord Lytton's), so far as they are devoted to politics, deal mainly with general considerations.

It would be idle to go far into these matters now. It is indeed sad to turn over letters, glowing with strong convictions as well as warm affection and showing the keenest interest in the affairs of the time, and to feel how completely they belong to the past. Some of the questions discussed might no doubt become interesting again at any moment; but for the present they belong to the empire of Dryasdust. Historians will have to form judgments of the merits of Lord Lytton's policy in regard to Afghanistan; but I cannot assume that my readers will be hankering for

information as to the special views taken at the time by a man who was, after all, a spectator at some distance. I therefore give fair warning to historical inquirers that they will get no help from me.

When the earlier letters were written the Afghan troubles had not become acute. Fitzjames deals with a variety of matters, some of which, as he of course recognises, lie beyond his special competence. He writes at considerable length, for example, upon the depreciation of the rupee, though he does not profess to be an economist. He gives his views as to the right principles not only of civil, but of military organisation; and discusses with great interest the introduction of natives into the civil service. 'In the proper solution of that question,' he says, 'lies the fate of the empire.' Our great danger is the introduction of a 'hidebound' and mechanical administrative system worked by third-rate Europeans and denationalised natives. It is therefore eminently desirable to find means of employing natives of a superior class, though the precise means must be decided by men of greater special experience. He writes much, again, upon the famine in Madras, in regard to which he had many communications with his brother-in-law, Cunningham, then Advocate-General of the Presidency. He was strongly impressed by the vast importance of wise precautions against the future occurrence of such calamities.

Naturally, however, he dilates most fully upon questions of codification, and upon this head his letters tend to expand into small state-papers. Soon after Lord Lytton's departure there was some talk of Fitzjames's resuming his old place upon the retirement of Lord Hobhouse, by whom he had been succeeded. It went so far that Maine asked him to state his views for the information of Lord Salisbury. Fitzjames felt all his old

eagerness. 'The prospect,' he says, 'of helping you and John Strachey to govern an empire,' and to carry out schemes which will leave a permanent mark upon history, is 'all but irresistibly attractive.' He knew, indeed, in his heart that it was impossible. He could not again leave his family, the elder of whom were growing beyond childhood, and accept a position which would leave him stranded after another five years. He therefore returned a negative, though he tried for a time to leave just a loop-hole for acceptance in case the terms of the tenure could be altered. In fact, however, there could be no real possibility of return, and Mr. Whitley Stokes succeeded to the appointment. Towards the end of Lord Lytton's governorship there was again some talk of his going out upon a special mission in regard to the same subject. But this, too, was little more than a dream, though he could not help 'playing with' the thought for a time.

Meanwhile he corresponded with Lord Lytton upon various measures. He elaborately annotated the drafts of at least one important bill; he submitted remarks to be laid before the Council at Lord Lytton's request, and finally he wrote an elaborate minute upon codification generally. I need only say that, in accordance with what he had said in his last speeches at Calcutta, he held that nearly enough had been done in the way of codifying for India. He insists, too, upon the danger of dealing with certain branches of legislation, where the codification might tend to introduce into India the subtleties and intricacies of some points of English law. Part of this correspondence was taking place during the exciting events in Afghanistan; and he then observes that after all codification is 'only a luxury,' and must for the present give way to more important matters.

Fitzjames, of course, followed the development of the

Government policy in regard to Russia and the Afghans with extreme interest. He looked with contempt upon the various fluctuations of popular sentiment at the period of the Bulgarian atrocities, and during the Russian war with Turkey; and he expreses very scanty respect for the policy of the English Government at that period. He was occasionally tempted to take to his old warfare in the press; but he had resolved to give up anonymous journalism. He felt, too, that such articles would give the impression that they were inspired by the Indian Government; and he thought it better to reserve himself for occasions on which he could appear openly in his own person. Such occasions offered themselves more than once, and he seized them with all his old vigour.

A speech made by Bright provoked the first noticeable utterance. Fitzjames wrote two letters to the 'Times,' which appeared December 27, 1877, and January 4, 1878, with the heading 'Manchester in India.' Bright represented the political school which he most detested. According to Bright (or Fitzjames's version of Bright, which was, I dare say, accurate), the British rule in India was the result of 'ambition, conquest, and crime.' We owed, therefore, a heavy debt to the natives; and, instead of paying it, we kept up a cumbrous system of government, which provided for members of the British upper classes, and failed to promote the material welfare of our subjects. The special instance alleged was the want of proper irrigation. To this Fitzjames replied in his first letter that we had, in fact, done as much as could be done, and possibly more than was judicious; and he accuses his antagonist of gross ignorance of the facts. His wrath, however, was really aroused by the moral assumptions involved. Bright, he thought, represented the view of the commonplace shopkeeper, intensified by the prejudices of the

Quaker. To him ambition and conquest naturally represented simple crimes. Ambition, reports Fitzjames, is the incentive to 'all manly virtues'; and conquest an essential factor in the building up of all nations. We should be proud, not ashamed, to be the successors of Clive and Warren Hastings and their like. They and we are joint architects of the bridge by which India has passed from being a land of cruel wars, ghastly superstitions, and wasting plague and famine, to be at least a land of peace, order, and vast possibilities. The supports of the bridge are force and justice. Force without justice was the old scourge of India; but justice without force means the pursuit of unattainable ideals. He speaks 'from the fulness of his heart,' and impressed by the greatest sight he had ever seen.

Fitzjames kept silence for a time, though it was a grief to him, but he broke out again in October 1878, during the first advance into Afghanistan. Party feeling was running high, and Fitzjames had to encounter Lord Lawrence, Lord Northbrook, Sir W. Harcourt, and other able antagonists. He mentions that he wrote his first letter, which fills more than two columns of the 'Times,' four times over. I should doubt whether he ever wrote any other such paper twice. The sense of responsibility shown by this excessive care led him also to confine himself to a single issue, upon which he could speak most effectively, out of several that might be raised. He will not trespass upon the ground of military experts, but, upon the grounds of general policy, supports a thesis which goes to the root of the matter. The advance of the Russian power in Central Asia makes it desirable for us to secure a satisfactory frontier. The position of the Russians, he urges, is analogous to our own position in India in the days of Wellesley. It is idle to denounce

them for acting as we acted; but it is clear that the two empires will ultimately become conterminous; and it is, therefore, essential for us that the dividing line should be so drawn as to place us in perfect security. Though Fitzjames declined to draw any specific moral, his antagonists insisted upon drawing one for him. He must be meaning to insinuate that we were to disregard any rights of the Afghans which might conflict with our alleged interests.

This point was touched in a letter by Lord Lawrence, to which Fitzjames felt bound to reply. He was reluctant to do so, because he was on terms of personal friendship with Lawrence, whose daughter had recently become the wife of Henry Cunningham. 'I have seldom,' says Fitzjames (October 4, 1877), 'met a more cheery, vivacious, healthy-minded old hero.' Lawrence, he is glad to think, took a fancy to him, and frequently poured himself out abundantly upon Indian topics. Their friendship, happily, was not interrupted by the controversy, in which Fitzjames was scrupulously respectful. This, again, raised the old question about International Law, which Fitzjames, as a good Austinian, regarded mainly as a figment. The moral point, however, is the only one of general interest. Are we bound to treat semi-barbarous nations on the same terms as we consider to govern our relations with France or Germany? Or are we morally entitled to take into account the fact that they are semi-barbarous? Fitzjames's view may be briefly defined. He repudiates emphatically the charge of immorality. He does not hold the opinion imputed to him by his antagonists that we may take what territory we please, regardless of the interests of barbarous natives. He repeats his assertion that our rule rests upon justice as well as force. He insists upon the same point, I may add, in his private letters to Lytton, and declares that it is even more im-

portant to be straightforward and to keep our word sacredly with Afghans than with civilised races. He writes very warmly upon the danger of exacting excessive punishment for the murder of Cavagnari. We ought to prove to the natives that our rule is superior to theirs, and that we are strong enough to keep our heads and be merciful even in the face of insults. But then, we have to act upon our own conceptions of morality, and must not be hampered by regarding nations as fictitious persons with indisputable rights. When we have to do with semi-savages, we may have to enforce our own views upon them by the strong hand. Some one, for example, had maintained that the eighth commandment forbade us to interfere with independent tribes; Fitzjames observes (December 25, 1878) that they have just the same right to be independent as the Algerine pirates to infest the Straits of Gibraltar. A parcel of thieves and robbers who happen to have got hold of the main highway of the world have not, therefore, a right to hold it against all comers. If we find it necessary to occupy the passes, we shall have to give them a lesson on the eighth commandment. Nobody will ever persuade him that any people, excepting 'a few strapping fellows between twenty and forty,' really prefer cruel anarchy and a life of murder and plunder to peace and order. Nor will anyone persuade him that Englishmen, backed by Sikhs and Ghoorkas, could not, if necessary, reduce the wild tribes to order, and 'sow the first seeds of civilisation' in the mountains.

To some people it may seem that the emphasis is laid too much upon force and too little upon justice. I am only concerned to say that Fitzjames's whole theory is based upon the view—sufficiently expounded already—that force, order, and justice require a firm basis of 'coercion'; and that, while we must be strictly just,

according to our own views of justice, we must not allow our hands to be tied by hollow fictions about the 'rights' of races really unfit for the exercise of the corresponding duties. On this ground, he holds it to be possible to have an imperial 'policy which shall yet be thoroughly unjingo-like.'

Upon this I need insist no further. I shall only say that he always regarded the British rule in India as the greatest achievement of the race; that he held it to be the one thoroughly satisfactory bit of work that we were now doing; and, further, that he held Lytton to be a worthy representative of our true policy. A letter which strikingly illustrates his enthusiasm was written in prospect of the great durbar at Delhi when the Queen was proclaimed Empress of India (January 1, 1877). No man, he thinks (September 6, 1876), ever had before or ever will have again so splendid an opportunity for making a great speech and compressing into a few words a statement of the essential spirit of the English rule, satisfactory at once to ourselves and to our subjects. 'I am no poet,' he says, 'as you are, but Delhi made my soul burn within me, and I never heard "God save the Queen" or saw the Union Jack flying in the heart of India without feeling the tears in my eyes, which are not much used to tears.' He becomes poetical for once; he applies the lines of 'that feeble poem Maud' to the Englishmen who are lying beneath the Cashmire Gate, and fancies that we could say of Hastings and Clive, and many another old hero, that their hearts must 'start and tremble under our feet, though they have lain for a century dead.' Then he turns to his favourite 'Christmas Hymn,' and shows how, with certain easy emendations, Milton's announcement of the universal peace, when the 'Kings sate still with awful eye,' might be applied to the *Pax Britannica*

in India. He afterwards made various suggestions, and even wrote a kind of tentative draft, from which he was pleased to find that Lytton accepted some suggestions. A rather quaint suggestion of a similar kind is discussed in a later letter. Why should not a 'moral text-book' for Indian schools be issued in the Queen's name? It might contain striking passages from the Bible, the Koran, and the Vedas about the Divine Being; with parables and impressive precepts from various sources; and would in time, he thinks, produce an enormous moral effect. In regard to Lytton himself, he was never tired of expressing the warmest approbation. He sympathises with him even painfully during the anxious times which followed the murder of Cavagnari. He remarks that, what with famine and currency questions and Afghan troubles, Lytton has had as heavy a burthen to bear as Lord Canning during the mutiny. He has borne it with extraordinary gallantry and cool judgment, and will have a place beside Hastings and Wellesley and Dalhousie. He will come back with a splendid reputation, both as a statesman and a man of genius, and it will be in his power to occupy a unique position in the political world.

Fitzjames's letters abound with such assurances, which were fully as sincere as they were cordial. I must also say that he shows his sincerity on occasions by frankly criticising some details of Lytton's policy, and by discharging the still more painful duty of mentioning unfavourable rumours as to his friend's conduct as Viceroy. The pain is obviously great, and the exultation correspondingly marked, when Lytton's frank reply convinces him that the rumours were merely the echo of utterly groundless slander. I will only add that the letters contain, as might be expected, some downright expressions

of disapproval of some persons, though never without sufficient reason for speaking his mind; and that, on the other hand, there are equally warm praises of the many friends whom he heartily admired. He can never speak warmly enough of Sir John Strachey, Sir Robert Egerton, and others, in whom he believed with his usual fervour. Fitzjames's belief in his friends and his estimate of their talents and virtues was always of the most cordial. I will quote a few phrases from one of his letters, because they refer to a friendship which I shall elsewhere have no opportunity of mentioning. Alfred Lyall, he says, 'is one of the finest fellows I ever knew in my life. If you cultivate him a little you will find him a man of more knowledge, more imagination (in the lofty and eminently complimentary sense of the word), more intelligent interest in the wonders of India, than almost anyone else in the country.' 'I talked to him last Sunday for nearly two hours incessantly on Indian matters and on religion and morals, and left off at last only because I could not walk up and down any longer in common duty to my wife, who was waiting dinner. It will be, as Byron says of Pope, a sin and a shame and a damnation if you and he don't come together. He is the one man (except Maine) I ever met who seemed to me to see the splendour of India, the things which have made me feel what I have so often said to you about it, and which make me willing and eager to do anything on earth to help you.'

I have dwelt at length upon these letters, because they seem to me eminently characteristic, and partly also because they explain Fitzjames's feelings at the time. He was becoming more and more conscious of his separation from the Liberal party. 'Why are you,' asked one of his friends, who was a thorough partisan, 'such a devil in politics?' It was because he was becoming more and

more convinced that English political life was contemptible; that with some it was like a 'cricket-match'—a mere game played without conviction for the sake of place or honour; that even where there were real convictions, they were such as could be adapted to the petty tastes of the vulgar and commonplace part of society; and that it was pitiable to see a body of six or seven hundred of the ablest men in the country occupied mainly in thwarting each other, making rational legislation impossible, and bowing more and more before the 'sons of Zeruiah,' who would be too strong for them in the end. For behind all this was arising a social and religious revolution, the end of which could be foreseen by no one. I dread, he says, the spread of my own opinions. The whole of society seems to be exposed to disintegrating influences. Young men have ceased to care for theology at all. He quotes a phrase which he has heard attributed to a very clever and amiable undergraduate whose tutor had spoken to him about going to chapel. If, said the pupil, there be really such a deity as you suppose, it appears to me that to praise him would be impertinent and to pray to him superfluous. What is to happen when such opinions are generally spread, and when the populace discovers that their superiors do not really hold the creeds which they have declared to be essential to society?

IX. APPOINTMENT TO A JUDGESHIP

Meanwhile, Fitzjames had been receiving various proofs of rising reputation. In January 1877 he was made K.C.S.I. He expresses his pleasure at having the name of India thus 'stamped upon him'; and speaks of the very friendly letter in which Lord Salisbury had announced the honour, and of his gratitude for Lord Lytton's share in

procuring it. The University of Oxford gave him the honorary D.C.L. degree in 1878. He was member of a Commission upon fugitive slaves in 1876, and of a Commission upon extradition in 1878.[1] He was also a member of the Copyright Commission appointed in October 1875, which reported in 1878. He agreed with the majority and contributed a digest of the law of copyright. He had occasional reasons to expect an elevation to the bench; but was as often disappointed. Upon the death of Russell Gurney (May 31, 1878) there was some talk of his becoming Recorder of London; but he did not much regret the speedy disappearance of this prospect, though it had its attractions. He was three times (1873, 1877, and 1878) appointed to act as judge upon circuit. When at last he was entrusted with the preparation of the Criminal Code in 1877, the Attorney-General expressed the opinion that a satisfactory execution of the task would entitle him to a judgeship, but could not give any definite pledge. When, however, in July 1878, it was determined to appoint a Commission to prepare a code for Parliament, Fitzjames said that he would be unable to undertake a laborious duty which would make practice at the bar impossible for the time, without some assurance of a judgeship. The Chancellor thereupon wrote a letter, which, though an explicit promise could not be made, virtually amounted to a promise. In accordance with this he was appointed on January 3, 1879, to a judgeship which had become vacant by the resignation of Sir Anthony Cleasby. A notorious

[1] Some account of the reports of these Commissions is given in the *History of Criminal Law*, ii. 45–58, 65–72. The Fugitive Slave Commission was appointed in consequence of a case in which the commander of an English ship in a Mohammedan port was summoned to give up a slave who had gone on board. A paper laid before the Committee by Fitzjames is reprinted in the first passage cited. He thinks that international law prescribes the surrender of the slave; and that we should not try to evade

journalist asserted that the promise had been made on consideration of his writing in the papers on behalf of the Indian Government. The statement is only worth notice as an ingenious inversion of the truth. So far from requiring any external impulse to write on Lytton's behalf, Fitzjames could hardly refrain from writing when its expediency was doubtful. When the occasion for a word in season offered itself, hardly any threats or promises could have induced him to keep silence. 'Judge or no judge,' he observes more than once, 'I shall be forced to write' if certain contingencies present themselves.

I give the letter in which he announced his appointment to his sister-in-law (January 4, 1879) :—'My dearest Emily, I write to tell you that I am out of all my troubles. Cleasby has unexpectedly resigned, and I am to succeed him. I know how this news will delight you, and I hasten to send it, though I hope to see you to-morrow. It gives me a strange, satisfied, and yet half-pathetic feeling. One great battle is won, and one great object obtained; and now I am free to turn my mind to objects which have long occupied a great part of it, so far as my leisure will allow. I hope I have not been anxious to any unworthy or unmanly extent about the various trials which are now over.

'In such moments as this, one's heart turns to those one loves. Dearest Emily, may all good attend you, and may I and mine be able to do our shares towards getting you the happiness you so pre-eminently deserve. I don't know what to wish for; but I wish for all that is best and

this 'revolting' consequence by a fiction as to the 'exterritoriality' of a ship of war, which might lead to unforeseen and awkward results. We ought to admit that we are deliberately breaking the law, because we hold it to be unjust and desire its amendment. He signs the report of the Commission understanding that it sanctions this view.

most for your good in the widest sense which the word can have. Ever your loving brother, J. F. S.'

In giving the news to Lord Lytton, he observes that he feels like a man who has got into a comfortable carriage on a turnpike road after scrambling over pathless mountain ranges. His business since his return has been too irregular and capricious to allow him to feel himself at his ease. That being over, he is resolved to make the bench a 'base of operations' and 'not a mere shelf.'

The hint about 'leisure' in the letter to Lady Egerton will be understood. Leisure in his mouth meant an opportunity for doing more than his duties required. He calculated on a previous occasion that, if he were a judge, he should have at his disposal three or, by good management, four working hours at his own disposal. I find him, characteristically enough, observing in an article of about the same date that the puisne judges have quite enough work without imposing any extra labour whatever upon them. But he tacitly assumed that he was to carry a double burthen. How he turned his time to account will appear directly. I need only say here that he unfeignedly enjoyed his new position. He often said that he could imagine nothing more congenial to all his wishes. He observes frequently that the judicial work is the only part of our administrative system which is still in a thoroughly satisfactory state. He felt as one who had got into a safe place of refuge, from which he could look out with pity upon those who were doomed to toil and moil, in an unhealthy atmosphere, as politicians, public officials, and journalists. He could learn to be philosophical even about the fate of his penal code.

NOTE

*** My nephew, Sir Herbert Stephen, has kindly sent me the enclosed note in regard to my brother's life in Ireland.

L. S.

In 1869 my father took for the long vacation a house called Dromquina, on the northern bank of the Kenmare River, about three miles from Kenmare. The 'river' is an arm of the sea, something like forty miles long, and at Dromquina, I suppose, not above half a mile wide. He had heard of the place by reason of his friend, Mr. Froude, living at that time at Lord Lansdowne's house, Derreen, in Killmakalogue Harbour, about fifteen miles lower down on the opposite shore. In a thickly populated country this would not constitute a near neighbourhood, but we made excursions to Derreen, either in a boat or in Mr. Froude's yacht, several times in the course of the summer. It is in the neighbourhood of the Kenmare River and Bantry Bay that Mr. Froude laid the scene of 'The Two Chiefs of Dunboy.'

Dromquina stands close to the water's edge, and we had several boats and the services of some half-dozen fishermen at our command. My father had learnt to row at Eton, and during this summer he always took an oar—and did good service with it—upon our frequent excursions on the water. I remember, by the way, that many years later, after he had been for some time a judge, he was one day rowing in a boat with a party of friends on the Thames, and was much gratified by my telling him what hard work I had found it, while steering, to keep the boat straight, because he pulled so much harder than the man who was rowing bow, a sturdy athlete, twenty years his junior, but no waterman.

He liked the life at Dromquina so much that in 1873, after his return from India, he took the Bishop of Limerick's house, Parknasilla, in Sneem Harbour, just opposite Derreen. That year, if I remember right, he took some shooting, to which we had to drive a considerable distance. In one year or the other I went out shooting with him two or three times. I do not think he ever had any shooting later: though, considering how little practice he can have had, he was a decidedly good shot. The country was rough, and the bags, though not heavy in quantity—we were lucky if we saw ten brace of grouse—pre-

sented a rather extensive variety of kind. During these two summers my father indulged himself freely in his favourite amusement of taking long walks, but also did a good deal of rowing and sailing. He had had my brothers and me taught to swim in a previous summer at the sea-side, and at Dromquina decided that we ought to be able to swim confidently in our clothes. In order to test our possession of this accomplishment, he one day took us out himself in a boat, and told me to sit on the gunwale, after which he artfully engaged me in conversation until he saw that I was not expecting my plunge, when he suddenly shoved me overboard. We all passed the ordeal with credit.

In 1873 he meditated building a house on the Kenmare River, but in the course of that summer he went to visit Sir John Strachey, who was then living at Anaverna House, at Ravensdale in County Louth. The Stracheys left it not long after, and we went there for the first time in 1875. Some years later my father took a lease of it, and there he spent every long vacation till 1891 inclusive, and the greater part of 1892.

For this place my father in particular, as well as his family generally, had from the first a strong affection. The house stands rather high, on the extreme southern slope of the Mourne Mountains, just within the border of the county of Louth and the province of Leinster. Behind and above the house to the north, the 'mountains' (moors varying in height from 1,000 to 2,700 feet) stretch for many miles, enclosing the natural harbour known as Carlingford Lough. Southwards there is a view across a comparatively level plain as far as the Wicklow Mountains, just beyond Dublin, and about sixty miles away. The sea is visible at no great distance on the east, and on fine days we could always see the Isle of Man, about eighty miles to the north-east, from any of several hill-tops within an hour's walk of the house. My father was therefore able to take to his heart's content the long walks that had always been his favourite amusement. He also devoted himself with the greatest enthusiasm to the improvement of the house and grounds. For many years before the Stracheys' short tenancy it had been unoccupied, and the grounds—of which there were about seventy acres—were at first very much overgrown, especially with laurels, which, when neglected, grow in that country in almost disgusting luxuriance. My father therefore occupied

himself a good deal with amateur forestry, and became, considering that he first turned his attention to the subject at the age of forty-six, a rather expert woodsman. A good deal of tree-felling was necessary, both in the interest of the trees and for the improvement of the views from the house and its immediate neighbourhood. My father had a Canadian axe, given to him by Frederick Gibbs, of which he was extremely fond, and with which he did a great deal of work. He was never reduced to cutting down a tree merely for exercise, but always first satisfied himself with much care that its removal would be an improvement. Another point in his wood-cutting that I always admired was that, when the more amusing part of the operation —which is cutting the tree down—was over, he invariably took personally his full share of the comparatively uninteresting work of sawing up the trunk, and disposing in an orderly manner of the branches. He also took great pains to cut his trees as close to the ground as possible, so as not to sacrifice the good timber at the butt, or leave a tall or ragged stump to disfigure the ground afterwards.

Another labour in which he took much interest was the making of paths through a little wood running up the hill-side behind the house, and the engineering of a stream which descended through it, and, being flooded two or three times every year, required a good deal of management, the more so as the house was supplied by it with water through an artificial streamlet made for the purpose. In these pursuits my father was always assisted by the village post-master, an old man named Morton, of picturesque appearance and conversation, and the consultations between the two used to be full of interest. Morton spoke with a strong brogue, and combined several other pursuits with that of post-master, the universality of his aptitudes making him an interesting companion, and my father had a great regard for him. He died a few months ago, being then, I believe, over eighty years of age.

Another out-door amusement that my father enjoyed was shooting at a mark with a Snider rifle. The nature of the grounds made it easy to get a safe hundred yards' range within three minutes' walk of the front door, and three or four hundred yards by going a little farther. We practised in this way pretty often, and I think the judge was, on the whole, a better shot than any of his sons. In the year 1883 the household was

increased, a good deal to my father's annoyance, by two policemen. At the Liverpool summer Assizes he had tried a gang of dynamiters, I think for treason-felony. They, or most of them, were convicted and sentenced to long terms of penal servitude. Some of my father's friends, not understanding that if anybody wanted to murder him it was quite as likely to be done, and quite as easy to do, in England as in Ireland, and perhaps entertaining the fantastic idea that the population of Louth had more regard for dynamiters than the population of London, suggested to the Irish Government that he was in some danger. The only thing that could be done was to order police protection, and this Sir George Trevelyan did. Accordingly two constables took up their abode in a room which happened to be available in the stable-yard, and mounted guard all day over the hall-door, following my father wherever he went during the day. Though their continued escort troubled him a good deal, there was no escape from it, and he got used to it to some extent. He made great friends with the men personally—like other people, he had the highest admiration for the force to which they belonged—and sometimes challenged them to a shooting match, either with their own rifles or with his, and was much gratified when he got the better of them.

With the people generally he became after a time extremely popular. I say after a time, because the inhabitants of that country do not, any more than country people in most parts of England, take strongly to strangers before they know anything about them. They never showed the least disposition to incivility, but for the first year or two my father had not many acquaintances among them. Later he came to be well known, and when he was taking his walks in the fields or on the mountains, there was hardly a man for a good many miles round who did not hail him by name. I have known them shout across two fields, 'It's a fine evening, Sir James'; and when they did so he invariably stopped and entered into conversation about the crops and the weather, or other topics of universal interest. With some of them whom he had frequently met while walking, or whom he had helped with advice or small loans (about the repayment of which they were, to his great delight, singularly honest), he was on particularly friendly terms, and made a point of visiting them in their houses at least once every year. They have remarkably good manners, and attracted him particularly

by their freedom from awkwardness, and their combination of perfect politeness with complete self-respect. I have reason to know that they have not forgotten him.

He once made a short expedition with one of my sisters to Achill, Clifden, and Galway. They stayed two nights at Achill, which sufficed for him to make friends with Mr. Sheridan, the landlord of the inn there. They never met again, but there were communications between them afterwards which showed that my father retained as long as he lived a kindly recollection of the people he had met in that particular holiday.

It was naturally during the summer holidays, and when one of us used to go circuit as his marshal, that my brothers and I saw most of him. I think that during the years of his judgeship I came to know all his opinions, and share most of them. One result of his strong memory, and the immense quantity of talking and reading that he had done in his life, was that he was never at a loss for conversation. But to attempt to give an idea of what his intimate talk was like when he conversed at his ease about all manner of men and things is not my business. It was, of course, impossible to live in the house with him without being impressed by his extraordinary industry. The mere bulk of the literary work he did at Anaverna would make it a surprising product of fifteen long vacations, and there was not a page of it which had not involved an amount of arduous labour which most men would regard as the antithesis of holiday-making. This, however, as the present biography will have shown, was his normal habit, and these notes are designed to indicate that it did not prevent him from enjoying, when away from books and pens and ink, a happy and vigorous life.

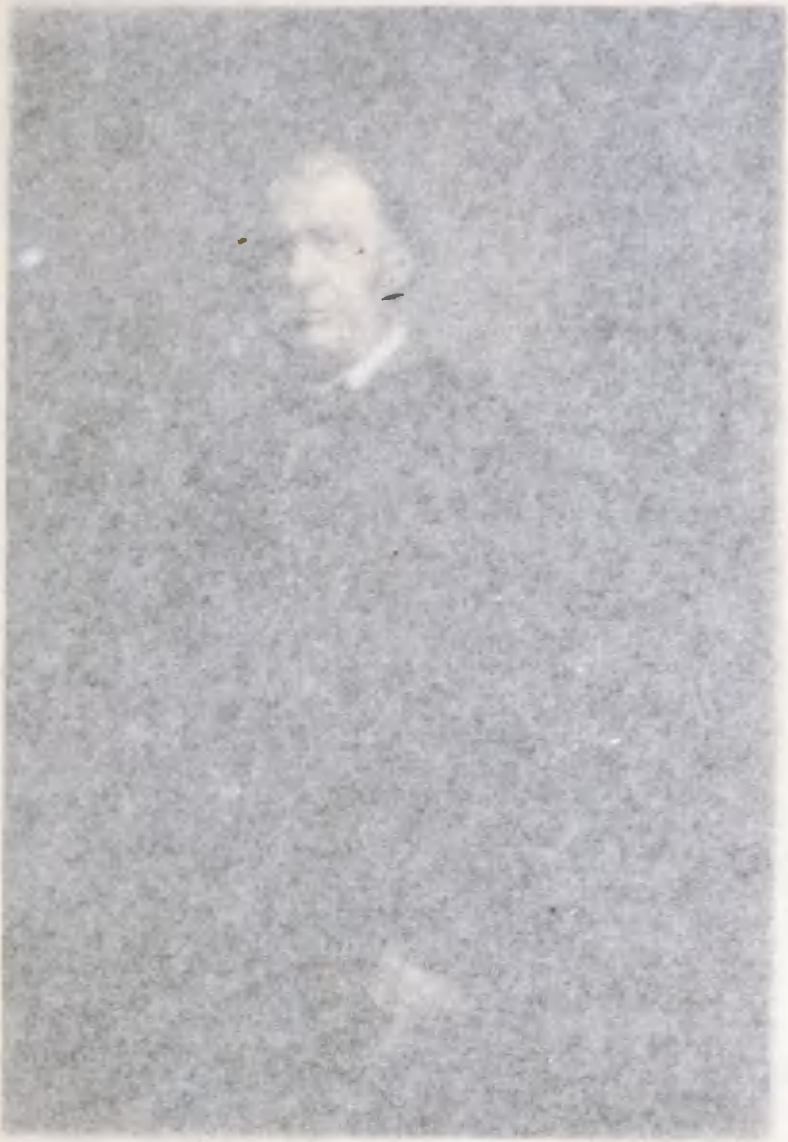
CHAPTER VI

JUDICIAL CAREER

I. HISTORY OF CRIMINAL LAW

THE Commission upon the Criminal Code occupied Fitzjames for some time after his appointment to a judgeship. His first appearance in his new capacity was in April 1879 at the Central Criminal Court, where he had held his first brief, and had made his first appearance after returning from India. He had to pass sentence of death upon an atrocious scoundrel convicted of matricide. A few months later he describes what was then a judge's business in chambers. It consists principally, he says, in making a number of small orders, especially in regard to debtors against whom judgment has been given. 'It is rather dismal, and shows one a great deal of the very seamy side of life. . . . You cannot imagine how small are the matters often dealt with, nor how important they often are to the parties. In this dingy little room, and under the most undignified circumstances, I have continually to make orders which affect all manner of interests, and which it is very hard to set right if I go wrong. It is the very oddest side of one's business. I am not quite sure whether I like it or not. At any rate it is the very antithesis of "pomp and 'umbug." '

The last phrase alludes to a conversation overheard at the assizes between two workmen. One of them described the judge, the late Lord Chief Justice Cockburn, as a 'cheery swine' who, as he affirmed, had gone to



From a Photograph by Barraud, 1866

church and preached a sermon an hour and a half long. The sheriff, too, was there in a red coat, and had no doubt got his place by interest. 'Pomp and 'umbug I calls it, and we poor chaps pays for it all.' Fitzjames heartily enjoyed good vernacular embodiments of popular imagination. He admitted that he was not quite insensible to the pleasures of pomp and humbug as represented by javelin men and trumpeters. His work, as my quotation indicates, included some duties that were trivial and some that were repulsive. In spite of all, however, he thoroughly enjoyed his position. He felt that he was discharging an important function, and was conscious of discharging it efficiently. There are few greater pleasures, certainly few were greater to him, than the exercise of a craft which one has so mastered as to have lost all the embarrassment of a beginner. He felt that he was not only up to his duties but had superfluous energy to direct elsewhere. The pleasantest hours of the day were those before and after business hours, when he could devote himself to his literary plans.

In some of his letters to Lord Lytton about the time of his appointment, I find unusual confessions of weariness. He admits that there is a difference between forty and fifty; and thinks he has not quite the old elasticity. I believe, however, that this refers to the worry caused by his work on the Commission, and the daily wrangle over the precise wording of the code, while the judgeship was not yet a certainty. At any rate there is no more mention of such feelings after a time; and in the course of the summer he was once more taking up an important literary scheme which would have tasked the energies of the youngest and strongest. He seems to have contemplated for a time a series of books which should cover almost the whole field of English law and be a modern substitute for

Blackstone. The only part of this actually executed—but that part was no trifle—was another book upon the English Criminal Law. It was, in truth, as he ventured to say, 'a remarkable achievement for a busy man to have written at spare moments.' We must, of course, take into account his long previous familiarity with the law. The germ of the book is to be found in the Essay of 1857; and in one way or other, as a writer, a barrister, a codifier, and a judge, he had ever since had the subject in his mind. It involved, however, along with much that was merely recapitulation of familiar topics, a great amount of laborious investigation of new materials. He mentions towards the end of the time that he has been working at it for eight hours a day during his holiday in Ireland. The whole was finished in the autumn of 1882, and it was published in the following spring.

Fitzjames explains in his preface how the book had come to be written. He had, as I have said, laid aside the new edition of the original 'View' in order to compile the 'Digest,' which he had felt to be its necessary complement. I may add that he also wrote with the help of his eldest son—now Sir Herbert Stephen—a 'Digest of the Law of Criminal Procedure,' which was published contemporaneously with the 'History.' The 'Digest' had led to the code and to the Commission. When the Commission was over, he returned to the proposed new edition of the 'View.' But Fitzjames seems to have had an odd incapacity for producing a new edition. We, who call ourselves authors by profession, are sometimes tempted, and we do not always resist the temptation, to describe a book as 'revised and corrected' when, in point of fact, we have added a note or two and struck out half a dozen obvious misprints. When Fitzjames said that his earlier treatise might be described as 'in some sense a first edition' of

the later, he meant that he had written an entirely new book upon a different aspect of the old subject. The 'View' is in one volume of about 500 pages, nearly a third of which (153 pages) consists of reports of typical French and English trials. These are reprinted in the 'History.' Of the remainder, over 100 pages are devoted to the Law of Evidence, which is not discussed in the 'History.' Consequently the first 233 pages of the 'View' correspond to the whole of the three volumes of the 'History,' which, omitting the reported trials given in both books, contain 4,440 pages. That is, the book has swelled to six times the original size, and I do not think that a single sentence of the original remains. With what propriety this can be called a 'new edition' I will not try to decide.

The cause of this complete transformation of the book is significant. Fitzjames, in his preface, observes that much has been said of the 'historical method' of late years. It has, he agrees, 'thrown great light upon the laws and institutions of remote antiquity.' Less, however, has been done for modern times; although what is called 'constitutional history' has been 'investigated with admirable skill and profound learning.' As I have noticed, his original adherence to the theories of Bentham and Austin had tended to make him comparatively indifferent to the principles accepted and illustrated by the writings of Maine. He had looked at first with some doubts upon those performances and the brilliant generalisations of 'Ancient Law' and its successors. He quotes somewhere a phrase of his friend Bowen, who had said that he read Maine's works with the profoundest admiration for the genius of the author, but with just a faint suspicion somewhere in the background of his mind that the results might turn out to be all nonsense. Fitzjames had at any rate no prepossessions in favour of the method, and may be

said to have been recruited, almost in spite of himself, by the historical school. But it was impossible for anyone to discuss the peculiarities of English Criminal Law without also being plunged into historical investigations. At every point the system is determined by the circumstances of its growth; and you can no more account for its oddities or its merits without considering its history than you can explain the structure of a bat or a seal without going back to previous forms of life. The growth of the criminal law, as Fitzjames remarks, is closely connected with the development of the moral sentiments of the community: with all the great political and social revolutions and with the changes of the ecclesiastical constitution and the religious beliefs of the nation. He was accordingly drawn into writing a history which may be regarded as complementary to the great constitutional histories of Hallam and Dr. Stubbs. He takes for granted many of their results, and frankly acknowledges all his obligations. But he had also to go through many investigations of his own special topics, and produced a history which, if I am not mistaken, is of the highest interest as bringing out certain correlative processes in the legal development of our institutions, which constitutional historians naturally left in the background.

His early work upon the similar book suggested by his father had made him more or less familiar with some of the original sources. He now had to plunge into various legal antiquities, and to study, for example, the six folio volumes called *Rotuli Parliamentorum*; to delve in yearbooks and old reports and the crabbed treatises of ancient lawyers, and to consider the precise meaning and effect of perplexed and obsolete statutes. He was not an antiquary by nature, for an antiquary, I take it, is one who loves antiquity for its own sake, and enjoys a minute inquiry

almost in proportion to its minuteness. Fitzjames's instinct, on the contrary, was to care for things old or new only so far as they had some distinct bearing upon living problems of importance. I could not venture to pronounce upon the value of his researches; but I am happily able to give the opinion of Professor Maitland, who can speak as one having authority. 'About the excellence of your brother's History of English Criminal Law,' he writes to me, 'there can, I suppose, be but one opinion among those who are competent to speak of such a matter. But I think that he is scarcely likely to get all the credit that is due to him for certain parts of the work which are especially interesting to me, and which I have often read—I mean those parts which deal with the middle ages. They seem to me full of work which is both good and new. I take it that he had no great love for the middle ages, and wrote the chapters of which I am speaking as a disagreeable task. I do not think that he had from nature any great power of transferring himself or his readers into a remote age, or of thinking the thoughts of a time very different from that in which he lived: and yet I am struck every time I take up the book with the thoroughness of his work, and the soundness of his judgments. I would not say the same of some of his predecessors, great lawyers though they were, for in dealing with mediæval affairs they showed a wonderful credulity. To me it seems that he has often gone right when they went wrong, and that his estimate of historical evidence was very much sounder than theirs. The amount of uncongenial, if not repulsive labour that he must have performed when he was studying the old law-books is marvellous. He read many things that had not been used, at all events in an intelligent way, for a very long time past; and—so I think, but it is impertinent in me to say it—he almost always got hold of the true story.'

To write three thick volumes involving such inquiries within three years and a half; and to do the work so well as to deserve this praise from an accomplished legal antiquary, was by itself an achievement which would have contented the ambition of an average author. But when it is remembered that the time devoted to it filled only the interstices of an occupation which satisfies most appetites for work, and in which he laboured with conscientious industry, I think that the performance may deserve Professor Maitland's epithet, 'marvellous.' He was greatly interested in the success of the book, though his experience had not led him to anticipate wide popularity. It was well received by competent judges, but a book upon such a topic, even though not strictly a 'law-book,' can hardly be successful in the circulating-library sense of the word. Fitzjames, indeed, had done his best to make his work intelligible to the educated outsider. He avoided as much as possible all the technicalities which make the ordinary law-book a hopeless bewilderment to the lay reader, and which he regarded on all grounds with natural antipathy. The book can be read, as one outsider at least can testify, with strong and continuous interest; though undoubtedly the reader must be prepared to endure a little strain upon his attention.

There are, indeed, certain drawbacks. In spite of the abundant proofs of industry and knowledge, there are indications that a little more literary polish might have been advantageous. Some of the materials are so crabbed that hardly any skill could have divested them of their natural stiffness. As Professor Maitland's remarks indicate, Fitzjames did not love the old period for its own sake. He liked, as I have noticed, general histories, such as Gibbon's, which give a bird's-eye view of long periods and, in a sense, codify a great mass of knowledge. But he had

not the imaginative power of reconstructing ancient states of society with all their picturesque incidents which was first exemplified by Scott. He was always interested in books that reveal human nature, and says in the 'History,' for example, that some of the State Trials are to him 'much more impressive than poetry or fiction.'[1] But the incidents do not present themselves to him, as they did to Scott or to Macaulay, as a series of vivid pictures with all their material surroundings. He shrank, more advisedly, perhaps, from another tendency which has given popularity to a different school. Though he gradually became an admirer of Maine's generalisations, founded upon cautious inquiries and recommended by extraordinary literary skill, his own intellectual aptitudes did not prompt him to become a rival. Briefly, his attitude of mind was in the strictest sense judicial. He asks always for distinct proofs and definite issues. He applies his canons of evidence to every statement that comes up, and, after examining it as carefully as he can, pronounces his conclusions, unequivocally but cautiously. He will not be tempted to a single step beyond the solid ground of verifiable fact. This undoubtedly gives confidence to the tolerably patient reader, who learns to respect the sobriety and impartiality of his guide. But it also fails to convince the hasty reader that he has seen the event precisely as it happened, or that he is in possession of a philosophical key to open all historical problems. I do not wish for a moment to underrate the value of work which has different qualities; but I do think that Fitzjames's merits as a solid inquirer may be overlooked by readers who judge a writer by the brilliance of his pictures and the neatness of his theories.

The book covers a very large field. A brief indication

[1] *History of Criminal Law*, i. 418.

of its general plan will show how many topics are more or less treated. He begins with a short account of the Roman Criminal Law; and then of English law before the Conquest. He next takes up the history of all the criminal courts, including the criminal jurisdiction of the extraordinary courts, such as Parliament and the Privy Council. This is followed by a history of the procedure adopted in the courts, tracing especially the development of trial by jury. The second volume opens a discussion of certain principles applicable to crime in general, such as the theory of responsibility. Next follows a history of the law relating to crime in general. He then takes up the history of the principal classes of crime, considering in separate chapters offences against the state, treason, sedition, and seditious libels; offences against religion, offences against the person (this opens the third volume), especially homicide; offences against property, such as theft and forgery; offences relating to trade and labour and 'miscellaneous offences.' This finishes the history of the law in England, but he adds an account of the extension of the English criminal law to India; and this naturally leads to an exposition of his views upon codification. The exposition is mainly a reproduction of the report of the Commission of 1878–9, which was chiefly his own composition. Finally, the old reports of trials, with a few alterations, are appended by way of pointing the contrast between the English and the French methods, upon which he has already introduced some observations.

Mr. Justice Stephen's book, said Sir F. Pollock in a review of the day, is 'the most extensive and arduous' undertaken by any English lawyer since the days of Blackstone. So large a framework necessarily includes many subjects interesting not only to the lawyer but to the antiquary, the historian, and the moralist; and one effect

of bringing them together under a new point of view is to show how different branches of inquiry reciprocally illustrate each other. The historian of the previous generation was content to denounce Scroggs and Jeffreys, or to lament the frequency of capital offences in the eighteenth century, and his moral, especially if he was a Whig, was our superiority to our great-grandfathers. There was plenty of room for virtuous indignation. But less attention was generally paid to the really interesting problems, how our ancestors came to adopt and to be content with these institutions; what precisely the institutions were, and how they were connected with other parts of the social framework. When an advance is made towards the solution of such problems, and when we see how closely they connect themselves with other problems, social, ecclesiastical, and industrial, as well as political, we are making also a step towards an intelligent appreciation of the real meaning of history. It is more than a collection of anecdotes, or even, as Carlyle put it, than the essence of a multitude of biographies; it becomes a study of the growth of an organic structure; and although Fitzjames was reluctant, even to excess, to put forward any claim to be a philosophical historian, a phrase too often applied to a dealer in 'vague generalities,' I think that such work as his was of great service in providing the data for the truly philosophical historian who is always just on the eve of appearing.

I venture to touch upon one or two points with the purpose of suggesting in how many ways the history becomes involved in topics interesting to various classes of readers, from the antiquary to the student of the development of thought. The history of trial by jury had, of course, been already unravelled by previous historians. Fitzjames was able, however, to produce quaint survivals

of the old state of things, under which a man's neighbours were assumed to be capable of deciding his guilt or innocence from their own knowledge. There was the Gibbet Law of Halifax, which lasted till the seventeenth century. The jurors might catch a man 'handhabend, backbarend, or confessand,' with stolen goods worth 13½*d.* in his possession and cut off his head on a primitive guillotine without troubling the judges. Even in 1880 there existed (and I presume there still exists) a certain 'liberty of the Savoy,' under the shadow of the new courts of justice, which can deal with keepers of disorderly houses after the same fashion.[1] From this primitive institution Fitzjames has to grope his way by scanty records to show how, during the middle ages, the jury ceased to be also witnesses and became judges of fact informed by witnesses. Emerging into the period of the Tudors and the early Stuarts, he comes to trials full of historic interest; to the dramatic scenes in which Sir Thomas More, and Throckmorton, and Raleigh played their parts. He has to show how in a period of overpowering excitement, when social organisation was far weaker, and the power of the rulers more dependent upon personal vigour, the Government dealt out sharp and short justice, though juries still had to be cajoled or bullied; how the system was influenced by the growth of the Star Chamber, with a mode of procedure conforming to a different type; and how, when the tyranny of such courts had provoked indignation, they were swept away and left to the jury its still undisputed supremacy. From the time when honest John Lilburne wrangled successfully against Cromwell's judges, it began to assume a special sanctity in popular belief. Then we come to the Popish plots and the brutalities of Scroggs and Jeffreys, when the jury played a leading part, though often perverted by popular or

[1] *History of Criminal Law*, i. 265–272.

judicial influence, and without any sound theory of evidence. The revolution of 1688 swept away the grosser abuses; the administration of justice became decorous and humane; a spirit of fair play showed itself; the laws of evidence were gradually worked out; and, instead of political tragedies, we have a number of picturesque cases throwing the strangest gleams of light into all manner of odd dark social corners. Within the last century, finally, the mode of investigating crime has become singularly dignified, impartial, and substantially just. A survey of this long history, bringing out at every step picturesque incidents and curious illustrations of social and political constitutions, lights up also the real merits and defects of the existing system. Fitzjames, with much fuller knowledge and longer experience, adheres substantially to his previous opinion. He has not, of course, the old-fashioned worship for the 'palladium of our liberties'; jurors could be 'blind and cruel' under Charles II., and as severe as the severest judge under George III. They are not more likely to do justice than a single judge. But the supreme advantages of placing the judge in his proper position as mediator and adviser, and of taking the public into confidence as to the perfect impartiality of the proceedings, outweigh all objections.

Again we have the curious history of the 'benefit of clergy.' Before 1487, a man who could read and write might commit murder as often as he pleased, subject to an indefinite chance of imprisonment by the 'ordinary.' At a later period, he could still murder at the cost of having M branded on the brawn of his thumb. But women and men who had married two wives or one widow did not enjoy this remarkable privilege. The rule seems as queer and arbitrary as any of the customs which excite our wonder among primitive tribes. The explanation, of course

throws a curious light upon the struggle between Church and State in the middle ages; and in the other direction helps to explain the singularities of criminal legislation in the eighteenth century. Our grandfathers seem to have thought that felony and misdemeanour were as much natural classes as mammal and marsupial, and that all that they could do was to remove the benefit of clergy when the corresponding class of crime happened to be specially annoying. They managed to work out the strange system of brutality and laxity and technicality in which the impunity of a good many criminals was set off against excessive severity to others.

The spiritual courts, again, give strange glimpses into the old ecclesiastical system. The records show that from the time of the Conquest to that of the Stuarts a system prevailed which was equivalent to the Spanish Inquisition, except that it did not use torture. It interfered with all manner of moral offences such as that of Eleanor Dalok, a 'communis skandalizatrix,' who 'utinizavit' (supposed to be a perfect of *utinam*) 'se fuisse in inferno quamdiu Deus erit in cælo, ut potuisset uncis infernalibus vindicare se de quodam Johanne Gybbys mortuo.' The wrath provoked by this and more vexatious interferences makes intelligible the sweeping away of the whole system in 1640. With this is connected the long history of religious persecution, from the time when (1382) the clergy forged an act of Parliament to give the bishops a freer hand with heretics. Strange fragments and shadows of these old systems still remain; and according to Fitzjames it would still in strict law be a penal offence to publish Renan's 'Life of Christ.'[1] The attempt to explain the law as referring to the manner, not the matter, of the attack is, he thinks, sophistical and

[1] Fitzjames had given a slighter account of this curious subject in the *Contemporary Review* for February 1871.

the law should be simply repealed. A parallel case is that of seditious libels; and there is a very curious history connected with the process by which we have got rid of the simple, old doctrine that all attacks upon our rulers, reasonable or otherwise, were criminal.

These are some of many cases in which Fitzjames has to give a side of history generally left in comparative obscurity. Upon some matters, as, for example, upon the history of impeachments, he thought that he had been able to correct or clear up previous statements. I have only wished to show how many interesting topics come into his plan; and to me, I confess, the most interesting of all is the illustration of the amazing nature of the so-called intellectual process involved. People seem to begin by making the most cumbrous and unreasonable hypotheses possible, and slowly and reluctantly wriggling out of them under actual compulsion. That is not peculiar to lawyers, and may have a meaning even in philosophy.

Fitzjames's comments upon the actual state of the law brings him to many important ethical problems. The discussion of the conditions of legal responsibility is connected with that of moral responsibility. Fitzjames once more insists upon the close connection between morality and law. 'The sentence of the law,' he says, 'is to the moral sentiment of the public what a seal is to hot wax. It converts into a permanent final judgment what might otherwise be a transient sentiment.' The criminal law assumes that 'it is right to hate criminals.' He regards this hatred as a 'healthy natural feeling'; for which he again quotes the authority of Butler and Bentham. The legal mode of expressing resentment directs it to proper applications in the same way as the law of marriage gives the right direction to the passion of love. From his point of view, as I have already indi-

cated, this represents the necessary complement to the purely utilitarian view, which would make deterrence the sole legitimate end of punishment. The other, though generally consistent, end is the gratification of the passion of moral indignation.[1]

Hence arise some difficult questions. Fitzjames insists, in agreement with Bentham, and especially with James Mill, that the criminal law is concerned with 'intentions,' not with 'motives.' All manner of ambiguities result from neglecting this consideration. The question for the lawyer is, did the prisoner mean to kill?—not, what were his motives for killing? The motives may, in a sense, have been good; as, for example, when a persecutor acts from a sincere desire to save souls. But the motive makes no difference to the sufferer. I am burnt equally, whether I am burnt from the best of motives or the worst. A rebel is equally mischievous whether he is at bottom a patriot or an enemy of society. The legislator cannot excuse a man because he was rather misguided than malignant. It is easy to claim good motives for many classes of criminal conduct, and impossible to test the truth of the excuse. We cannot judge motives with certainty. The court can be sure that a man was killed; it can be sure that the killing was not accidental; but it may be impossible to prove that the killer had not really admirable motives.

But if so, what becomes of the morality? The morality of an act is of course affected (if not determined) by the motive.[2] We can secure, no doubt, a general correspondence. Crimes, in nine cases out of ten, are also sins. But crimes clearly imply the most varying degrees of immorality: we may loathe the killer as utterly vile, or be half inclined very much to applaud what he has done. The difficulty is

[1] *History of Criminal Law*, ii. 81–3.
[2] *Ibid.* iii. 84.

properly met, according to Fitzjames, by leaving a wide discretion in the hands of the judge. The jury says the law has been broken; the judge must consider the more delicate question of the degree of turpitude implied. Yet in some cases, such as that of a patriotic rebel, it is impossible to take this view. It is desirable that a man who attacks the Government should attack it at the risk of his life. Law and morality, therefore, cannot be brought into perfect coincidence, although the moral influence of law is of primary importance, and in the normal state of things no conflict occurs.

There are certain cases in which the difficulty presents itself conspicuously. The most interesting, perhaps, is the case of insanity, which Fitzjames treats in one of the most elaborate chapters of his book. It replaces a comparatively brief and crude discussion in the 'View,' and is conspicuously candid as well as lucid. He read a great many medical treatises upon the subject, and accepts many arguments from an opponent who had denounced English judges and lawyers with irritating bitterness. There is no difficulty when the madman is under an illusion. Our ancestors seem to have called nobody mad so long as he did not suppose himself to be made of glass or to be the Devil. But madness has come to include far more delicate cases. The old lawyers were content to ask whether a prisoner knew what he was doing and whether it was wrong. But we have learnt that a man may be perfectly well aware that he is committing a murder, and know murders to be forbidden in the Ten Commandments, and yet unable to refrain from murder. He has, say the doctors, homicidal monomania, and it is monstrous to call in the hangman when you ought to be sending for the doctor. The lawyer naturally objects to the introduction of this uncertain element, which may be easily turned to

account by 'experts' capable of finding symptoms of all kinds of monomania. Fitzjames, however, after an elaborate discussion, decides that the law ought to take account of mental disease which operates by destroying the power of self-control. The jury, he thinks, should be allowed to say either 'guilty,' or 'not guilty on the ground of insanity,' or 'guilty, but his power of self-control was diminished by insanity.'[1] I need not go into further detail, into a question which seems to be curiously irritating to both sides. I am content to observe that in the earlier book Fitzjames had been content with the existing law, and that the change of opinion shows very careful and candid consideration of the question, and, as I think, an advance to more moderate and satisfactory conclusions.

The moral view of the question comes out in other relations. He intimates now and then his dissatisfaction with the modern sentimentalism, his belief in the value of capital and other corporal punishments, and his doubt whether the toleration of which he has traced the growth can represent more than a temporary compromise. But these represent mere *obiter dicta* which, as he admits, are contrary to popular modes of thought. He is at least equally anxious to secure fair play for the accused. He dwells, for example, upon the hardships inflicted upon prisoners by the English system of abstinence from interrogation. The French plan, indeed, leads to cruelty, and our own has the incidental advantage of stimulating to the search of independent evidence. 'It is much pleasanter,' as an Indian official remarked to him by way of explaining the practice of extorting confessions in India, 'to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up

[1] *History of Criminal Law*, ii. 175.

evidence.'[1] Fitzjames, however, frequently remarked that poor and ignorant prisoners, unaccustomed to collect their ideas or to understand the bearing of evidence, are placed at a great disadvantage by never having stated their own cases. The proceedings must pass before them 'like a dream which they cannot grasp,' and their counsel, if they have counsel, can only guess at the most obvious line of defence. He gives instances of injustice inflicted in such cases, and suggests that the prisoners should be made competent witnesses before both the magistrates and the judge. This would often enable an innocent man to clear up the case; and would avoid the evils due to the French system.[2]

Without going further into this or other practical suggestions, I will quote his characteristic conclusion. The Criminal Law, he says, may be regarded as an expression of the second table of the Ten Commandments. It follows step by step the exposition of our duty to our neighbours in the Catechism. There was never more urgent necessity for preaching such a sermon than there is at present. There was never so much doubt as to other sanctions. The religious sanction, in particular, has been 'immensely weakened, and people seem to believe that if they do not happen to like morality, there is no reason why they should be moral.' It is, then, 'specially necessary to those who do care for morality to make its one unquestionable indisputable sanction as clear and strong and emphatic as acts and words can make it. A man may disbelieve in God, heaven, and hell; he may care little for mankind, or society, or for the nation to which he belongs—let him at

[1] *History of Criminal Law*, i. 442.

[2] Fitzjames discussed this question for the last time in the *Nineteenth Century* for October 1886. Recent changes had, he says, made the law hopelessly inconsistent; and he points out certain difficulties, though generally adhering to the view given above.

least be plainly told what are the acts which will stamp him with infamy, hold him up to public execration and bring him to the gallows, the gaol, or the lash.'[1] That vigorous summary shows the connection between the 'Liberty, Equality, Fraternity,' the various codifying enterprises, and his writings upon theology and ethics. The remarkable point, if I am not mistaken, is that in spite of the strong feeling indicated by the passage just quoted, the tone of the book is throughout that of sound common sense, impartiality, and love of fair play. It is characteristic that in spite of his prejudice against the commonplaces about progress, he does, in fact, show that the history of criminal law is in many most important respects the history of a steady advance in humanity and justice. Nor, in spite of a reservation or two against 'sentimentalism,' does he fail to show hearty sympathy with the process of improvement.

II. 'NUNCOMAR AND IMPEY'

In the summer (1883) which followed the publication of the 'History,' it began to appear that Fitzjames's health was not quite so vigorous as it had hitherto been. He could not throw off the effects of a trifling accident in June so rapidly as of old; and in the last months of the year his condition caused for a time some anxiety to his wife. Considered by the light of what afterwards happened, these symptoms probably showed that his unremitting labours had inflicted a real though as yet not a severe injury upon his constitution. For the present, however, it was natural to suppose that he was suffering from nothing more than a temporary exhaustion, due, perhaps, to the prolonged wrestle with his great book. Rest, it was believed, would fully restore him. He was, indeed, already

[1] *History of Criminal Law*, iii. 367.

at work again upon what turned out to be his last considerable literary undertaking. The old project for a series of law-books probably seemed rather appalling to a man just emerging from his recent labours; and those labours had suggested another point to him. The close connection between our political history and our criminal law had shown that a lawyer's technical knowledge might be useful in historical research. He resolved, therefore, to study some of the great trials 'with a lawyer's eye'; and to give accounts of them which might exhibit the importance of this application of special knowledge.[1] He soon fixed upon the impeachment of Warren Hastings. This not only possessed great legal and historical interest, but was especially connected with his favourite topics. It would enable him to utter some of his thoughts about India, and to discuss some very interesting points as to the application of morality to politics. He found that the materials were voluminous and intricate. Many blue books had been filled by the labours of parliamentary committees upon India; several folio volumes were filled with reports of the impeachment of Hastings, and with official papers connected with the same proceeding. A mass of other materials, including a collection of Sir Elijah Impey's papers in the British Museum, soon presented themselves. Finally, Fitzjames resolved to make an experiment by writing a monograph upon 'Impey's Trial of Nuncomar,' which is an episode in the great Warren Hastings story, compressible within moderate limits. Impey, as Fitzjames remarks incidentally, had certain claims both upon him and upon Macaulay; for he had been a Fellow of Trinity and had made the first attempt at a code in India. If this first book succeeded Fitzjames would take up the larger subject. In the event he never proceeded beyond the pre-

[1] *Nuncomar and Impey*, i. 1.

liminary stage. His 'Story of Nuncomar and the Impeachment of Sir Elijah Impey,' published in the spring of 1885, gives the result.

Fitzjames had been familiar from his boyhood with the famous article upon Warren Hastings, in which Macaulay reached the very culminating point of his surpassing literary skill. It is a skill which, whatever else may be said of it, makes his opponents despair. They may disprove his statements; they can hardly hope to displace his versions of fact from their hold upon popular belief. One secret of Macaulay's art is suggested by the account of his delight in 'castle-building.' His vast reading and his portentous memory enabled him to create whole galleries of mental pictures of the past, and his vigorous style embodies his visions with admirable precision and sharpness of outline. But, as those who have followed him in detail became painfully aware, there is more than one deduction to be made from his merits. His imagination undoubtedly worked upon a great mass of knowledge; but the very nature of the imaginative process was to weave all the materials into a picture, and therefore to fill up gaps by conjecture. He often unconsciously makes fancy do the work of logic. 'The real history' (of the famous quarrel between Addison and Steele), says Macaulay, 'we have little doubt, was something like this': and he proceeds to tell a story in minute detail as vividly as if he had been an eye-witness. To him, the clearness of the picture was a sufficient guarantee of its truthfulness. It was only another step to omit the 'doubt' and say simply 'The real history was.' Yet all the time the real history according to the best evidence was entirely different. We can never be certain whether one of Macaulay's brilliant pictures is—as it sometimes certainly is—a fair representation of a vast quantity of evidence or an auda-

cious inference from a few hints and indications. It represents, in either case, the effect upon his mind; but the effect, if lively enough, is taken to prove itself. He will not condescend to the prosaic consideration of evidence, or to inserting the necessary 'ifs' and 'perhapses' which disturb so painfully the impression of a vivid narrative. When his strong party feelings have coloured his beliefs from the first, his beliefs acquire an intensity which enables them not only to dispense with but to override evidence.

I insist upon this because Fitzjames's mental excellencies and defects exactly invert Macaulay's. His imagination did not clothe the evidence with brilliant colours; and, on the other hand, did not convert conjectures into irresistible illusions. The book upon 'Nuncomar and Impey' shows the sound judgment of evidence in regard to a particular fact which Professor Maitland perceives in his treatment of mediæval affairs. It is an exhaustive, passionless, and shrewd inquiry into the facts. He speaks in one of his letters of the pleasure which he has discovered in treating a bit of history 'microscopically'; in getting at the ultimate facts instead of trusting to the superficial summaries of historians. In brief, he is applying to an historical question the methods learnt in the practice of the courts of law. The book is both in form and substance the careful summing up of a judge in a complicated criminal case. The disadvantage, from a literary point of view, is obvious. If we were profoundly interested in a trial for murder, we should also follow with profound interest the summing up of a clear-headed businesslike judge. But, if we did not care two straws whether the man were guilty or innocent, we might find the summing up too long for our patience. That, I fear, may be true in this case. Macaulay's great triumph was to create an interest in matters which, in other hands, were repulsively

dry. Fitzjames could not create such an interest; though his account may be deeply interesting to those who are interested antecedently. He observes himself that his 'book will be read by hardly anyone, while Macaulay's paragraph will be read with delighted conviction by several generations. So long as he is remembered at all, poor Impey will stand in a posthumous pillory as a corrupt judge and a judicial murderer.[1] One reason is, no doubt, that the effect of a pungent paragraph is seldom obliterated by a painstaking exposure of its errors requiring many pages of careful and guarded reasoning. Macaulay's narrative could be superseded in popular esteem only by a writer who should condense a more correct but equally dogmatic statement into language as terse and vivid as his own. Yet Fitzjames's book must be studied by all conscientious historians in future, and will help, it is to be hoped, to spread a knowledge of the fact that Macaulay was not possessed of plenary inspiration.

It will be enough to give one instance of Macaulay's audacity. 'Every schoolboy of fourteen' knows by heart his vivid account of the reign of terror produced by Impey's exercise of the powers of the supreme court, and of the bribe by which Hastings bought him off. A powerful and gloomy picture is drawn in two or three expressive paragraphs. The objection to the story, says Fitzjames, 'is that it is absolutely false from end to end, and in almost every particular.'[2] Fitzjames proceeds not only to assert the absence of evidence, but to show what was the supposed evidence out of which Macaulay's imagination conjured this vision of horror. Fitzjames remarks in a letter that his investigations had given him a very low opinion of the way in which history was written, and certainly, if

[1] *Nuncomar and Impey*, ii. 114.
[2] *Ibid.* ii. 247.

Macaulay's statement was a fair specimen, the estimate could hardly be too low.

I may admit that, to my mind, the purely judicial method followed by Fitzjames has its disadvantages. It tends to the exclusion of considerations which, though rightly excluded from a criminal inquiry, cannot be neglected by an historian. A jury would be properly directed to acquit Hastings upon the charge of having instigated the prosecution of Nuncomar. Yet, after all, it is very hard to resist the impression that he must have had some share, more or less direct, in producing an event which occurred just at the right moment and had such fortunate results for him. It would be very wrong to hang a man upon such presumptions; but it is impossible to deny that they have a logical bearing upon the facts. However this may be, I think it is undeniable that Fitzjames did good service to history in showing once for all the ruthlessness and extravagance of Macaulay's audacious rhetoric. It is characteristic that while making mincemeat of Macaulay's most famous essay, Fitzjames cannot get rid of his tenderness for the great 'Tom' of his boyish days. Besides praising the literary skill, which indeed, is part of his case, he parts from his opponent with the warm eulogy which I have previously noticed. He regards Macaulay as deluded by James Mill and by the accepted Whig tradition. He condemns Mill, whose dryness and severity have gained him an undeserved reputation for impartiality and accuracy; he speaks—certainly not too strongly—of the malignity of Francis; and he is, I think, a little hard upon Burke, Sheridan, and Elliot, who were misled by really generous feelings (as he fully admits) into the sentimental rhetoric by which he was always irritated. He treats them as he would have put down a barrister trying to introduce totally irrelevant eloquence. Macaulay

escapes more easily. Fitzjames felt that the essay when first published was merely intended as a summary of the accepted version, making no pretensions to special research. The morality of this judgment is questionable. Burke, believing sincerely that Hastings was a wicked and corrupt tyrant, inferred logically that he should be punished. Macaulay, accepting Burke's view of the facts, calmly asserts that Hastings was a great criminal, and yet with equal confidence invites his readers to worship the man whose crimes were useful to the British empire. Fitzjames disbelieved in the crimes, and could therefore admire Hastings without reserve as the greatest man of the century. His sympathy with Macaulay's patriotism made him, I think, a little blind to the lax morality with which it was in this case associated. There is yet another point upon which I think that Macaulay deserves a severer sentence. 'It is to be regretted,' says Fitzjames, 'that Macaulay should never have noticed the reply made to the essay by Impey's son.'[1] Unluckily this is not a solitary instance. Macaulay, trusting to his immense popularity, took no notice of replies which were too dull or too complicated to interest the public. Fitzjames would himself have been utterly incapable of behaviour for which it is difficult to discover an appropriate epithet, but which certainly is inconsistent with a sincere and generous love of fair play. If he did not condemn Macaulay more severely, I attribute it to the difficulty which he always felt in believing anything against a friend or one associated with his fondest memories. Had I written the book myself, I should have felt bound to say something unpleasant: but I am hardly sorry that Fitzjames tempered his justice with a little excess of mercy.

The scheme of continuing this book by an account of

[1] *Nuncomar and Impey*, i. 7.

Warren Hastings was not at once dropped, but its impracticability became obvious before many months had passed. Fitzjames was conducting the Derby assizes in April 1885, when he had a very serious attack of illness. His wife was fortunately with him, and, after consulting a doctor on the spot, he returned to London, where he consulted Sir Andrew Clark. A passage from a letter to Lady Egerton explains his view of what had happened. 'I suppose,' he says (April 29, 1885), 'that Mary has told you the dreadful tale of my getting up in the morning and finding that my right hand had either forgot its cunning or had turned so lazy that I could not write with it, and how I sent for a Derby doctor, and how he ordered me up to London, and how Clark condemned me to three months' idleness and prison diet—I must admit, of a sufficiently liberal kind. Fuller sees the sentence carried out in detail. I have had about three days' experience of it, and I must own that I already feel decidedly better. I think that after the long vacation I shall be thoroughly well again. In the meantime, I feel heartily ashamed of myself. I always did consider any kind of illness or weakness highly immoral, but one must not expect to be either better or stronger than one's neighbours; and I suppose there is some degree of truth in what so many people say on Sundays about their being miserable sinners.' He adds that he is having an exceedingly pleasant time, which would be still more pleasant if he could write with his own hand (the letter is dictated). He has 'whole libraries of books' into which he earnestly desires to look. He feels like a man who has exchanged dusty boots for comfortable slippers; he is reading Spanish 'with enthusiasm'; longing to learn Italian, to improve his German, and even to read up his classics. He compares himself to a traveller in Siberia who, according to one of his favourite anecdotes,

loved raspberries and found himself in a desert entirely covered with his favourite fruit.

He took the blow gallantly; perhaps rather too lightly. He was, of course, alarmed at first by the symptoms described. Clark ultimately decided that, while the loss of power showed the presence of certain morbid conditions, a careful system of diet might keep at bay for an indefinite time the danger of the development of a fatal disease. Fitzjames submitted to the medical directions with perhaps a little grumbling. He was not, like his father, an ascetic in matters of food. He had the hearty appetite natural to his vigorous constitution. He was quite as indifferent as his father to what, in the old phrase, used to be called 'the pleasures of the table.' He cared absolutely nothing for the refinements of cookery, and any two vintages were as indistinguishable to him as two tunes—that is, practically identical. He cared only for simple food, and I used, in old days, to argue with him that a contempt for delicacies was as fastidious as a contempt for plain beef and mutton. However that may be, he liked the simplest fare, but he liked plenty of it. To be restricted in that matter was, therefore, a real hardship. He submitted, however, and his health improved decidedly for the time. Perhaps he dismissed too completely the thought of the danger by which he was afterwards threatened. But, in spite of the improvement, he had made a step downwards. He was allowed to go on circuit again in the summer, after his three months' rest, and soon felt himself quite equal to his work. But, from this time, he did not add to his burthens by undertaking any serious labours of supererogation.

III. JUDICIAL CHARACTERISTICS

I will here say what I can of his discharge of the judicial functions which were henceforth almost his sole occupation. In the first place, he enjoyed the work, and felt himself to be in the position most suitable to his powers. Independent observers took, I believe, the same view. I have reported the criticisms made upon his work at the bar, and have tried to show what were the impediments to his success. In many respects these impediments ceased to exist, and even became advantages, when he was raised to the bench. The difficulty which he had felt in adapting himself to other men's views, the contempt for fighting battles by any means except fair arguments upon the substantial merits of the case, were congenial, at least, to high judicial qualities. He despised chicanery of all kinds, and formed independent opinions upon broad grounds instead of being at the mercy of ingenious sophistry. He was free from the foibles of petty vanity upon which a dexterous counsel could play, and had the solid, downright force of mind and character which gives weight to authority of all kinds. I need not labour to prove that masculine common sense is a good judicial quality. Popular opinion, however, is apt to misconstrue broad epithets and to confound vigour with harshness. Fitzjames acquired, among careless observers, a certain reputation for severity. I have not the slightest wish to conceal whatever element of truth there might be in such a statement. But I must begin by remarking a fact which, however obvious, must be explicitly stated. If there was one thing hateful to Fitzjames, and sure to call out his strongest indignation, it was oppression in any form. The bullying from which he suffered at school had left,

as I have said, a permanent hatred for bullies. It had not encouraged him, as it encourages the baser natures, to become a bully in his turn, but rather to hate and trample down the evil thing wherever he met it. His theories, as I have said, led him to give a prominent place (too prominent, as I think) to what he called 'coercion.' Coercion in some form was inevitable upon his view; but right coercion meant essentially the suppression of arbitrary violence and the substitution for it of force regulated by justice. Coercion, in the form of law, was identical with the protection of the weak against the strong and the erection of an impregnable barrier against the tyrannous misuse of power. This doctrine exactly expressed his own character, for, as he was strong, he was also one of the most magnanimous of men. He was incapable of being overbearing in social intercourse. He had the fighting instinct to the full. An encounter with a downright enemy was a delight to him. But the joy of battle never deadened his instinct of fair play. He would speak his mind, sometimes even with startling bluntness, but he never tried to silence an opponent by dogmatism or bluster. The keenest argument, therefore, could not betray him into the least discourtesy. He might occasionally frighten a nervous antagonist into reticence and be too apt to confound such reticence with cowardice. But he did not take advantage of his opponent's weakness. He would only give him up as unsuited to play the game in the proper temper. In short, he represented what is surely the normal case of an alliance between manliness and a love of fair play. It is the weaker and more feminine, or effeminate, nature that is generally tempted to resort to an unfair use of weapons.

When, therefore, Fitzjames found himself in a position of authority, he was keenly anxious to use his power fairly.

He became decidedly more popular on the bench than he had been at the bar. His desire to be thoroughly fair could not be stronger; but it had a better opportunity of displaying itself. The counsel who practised before him recognised his essential desire to allow them the fullest hearing. He learnt to 'suffer fools' patiently, if not gladly. I apologise, of course, for supposing that any barrister could be properly designated by such a word; but even barristers can occasionally be bores. Some gentlemen, who are certainly neither the one nor the other, have spoken warmly of his behaviour. The late Mr. Montagu Williams, for example, tells with pleasant gratitude how Fitzjames courteously came down from the bench to sit beside him and so enabled him to spare a voice which had been weakened by illness. His comment is that Fitzjames concealed 'the gentleness of a woman' under a stern exterior. So Mr. Henry Dickens tells me of an action for slander in which he was engaged when a young barrister. Both slanderer and slandered were employed in Billingsgate. The counsel for the defence naturally made a joke of sensibility to strong language in that region. Mr. Dickens was in despair when he saw that the judge and jury were being carried away by the humorous view of the case. Knowing the facts, he tried to bring out the serious injury which had been inflicted. Fitzjames followed him closely, became more serious, and summed up in his favour. When a verdict had been returned accordingly, he sent a note to this effect:—'Dear Dickens, I am very grateful to you for preventing me from doing a great act of injustice.' 'He was,' says Mr. Dickens, 'one of the fairest-minded men I ever knew.' His younger son has described to me the kindness with which he encouraged a young barrister—the only one who happened to be present—to undertake the defence of a prisoner, and helped him through a difficult

case which ended by an acquittal upon a point of law. 'I only once,' says my nephew, 'heard him interrupt counsel defending a prisoner,' except in correcting statements of fact. The solitary exception was in a case when palpably improper matter was being introduced.

In spite of his patience, he occasionally gave an impression of irritability, for a simple reason. He was thoroughly determined to suppress both unfairness and want of courtesy or disrespect to the court. When a witness or a lawyer, as might sometimes happen, was insolent, he could speak his mind very curtly and sharply. A powerful voice and a countenance which could express stern resentment very forcibly gave a weight to such rebukes, not likely to be forgotten by the offender. He had one quaint fancy, which occasionally strengthened this impression. Witnesses are often exhorted to 'watch his lordship's pen' in order that they may not outrun his speed in taking notes. Now Fitzjames was proud of his power of rapid writing (which, I may remark, did not include a power of writing legibly). He was therefore nervously irritable when a witness received the customary exhortation: 'If you watch my pen,' he said to a witness, 'I will send you to prison': which, as he then had to explain, was not meant seriously. It came to be understood that, in his case, the formula was to be avoided on pain of being considered wantonly offensive.

He rigidly suppressed, at any rate, anything which could lower the dignity of the proceedings. He never indulged in any of those jokes to which reporters append—sometimes rather to the reader's bewilderment—the comment, 'loud laughter.' Nor would he stand any improper exhibitions of feeling in the audience. When a spectator once laughed at a piece of evidence which ought to have caused disgust, he ordered the man to be placed by the side

of the prisoner in the dock, and kept him there till the end of the trial. He disliked the promiscuous attendance of ladies at trials, and gave offence on one occasion by speaking of some persons of that sex who were struggling for admission as 'women.' He was, however, a jealous defender of the right of the public to be present under proper conditions; and gave some trouble during a trial of dynamiters, when the court-house had been carefully guarded, by ordering the police to admit people as freely as they could. His sense of humour occasionally made itself evident in spite of his dislike to levity. He liked to perform variations upon the famous sentence, 'God has, in his mercy, given you a strong pair of legs and arms, instead of which you go about the country stealing ducks'; and he would detail absurd or trifling stories with an excess of solemnity which betrayed to the intelligent his perception of their comic side.

Fitzjames thought, and I believe correctly, that he was at his best when trying prisoners, and was also perhaps conscious, with equal reason, I believe, that no one could do it better. His long experience and thorough knowledge of the law of crime and of evidence were great qualifications. His force of character combined with his hatred of mere technicalities, and his broad, vigorous common sense, enabled him to go straight to the point and to keep a firm hand upon the whole management of the case. No rambling or irrelevance was possible under him. His strong physique, and the deep voice which, if not specially harmonious, was audible to the last syllable in every corner of the court, contributed greatly to his impressiveness. He took advantage of his strength to carry out his own ideal of a criminal court as a school of morality. 'It may be truly said,' as he remarks, 'that to hear in their happiest moments the summing up of such judges as Lord

Campbell, Lord Chief Justice Erle, or Baron Parke, was like listening not only (to use Hobbes's famous expression) to law living and armed, but to justice itself.'[1] He tried successfully to follow in their steps.

Justice implies fair play to the accused. I have already noticed how strongly he insists upon this in his writings. They show how deeply he had been impressed in his early years at the bar by the piteous spectacle of poor ignorant wretches, bewildered by an unfamiliar scene, unable to collect their thoughts, or understand the nature of the proceedings, and sometimes prevented by the very rules intended for their protection from bringing out what might be a real defence. Many stories have been told me of the extreme care with which he would try to elicit the meaning of some muddled remonstrance from a bewildered prisoner, and sometimes go very near to the verge of what is permitted to a judge by giving hints which virtually amounted to questions, and so helping prisoners to show that they were innocent or had circumstances to allege in mitigation. He always spoke to them in a friendly tone, so as to give them the necessary confidence. A low bully, for example, was accused of combining with two women to rob a man. A conviction seemed certain till the prisoners were asked for their defence; when one of them made a confused and rambling statement. Fitzjames divined the meaning, and after talking to them for twenty minutes, during which he would not directly ask questions, succeeded in making it clear that the prosecutor was lying, and obtained an acquittal. One other incident out of many will be enough. A man accused of stabbing a policeman to avoid arrest, pleaded guilty and was sentenced to seven years' penal servitude. On being removed by the warders he clung to the rail, screaming, 'You can't do it.

[1] *History of Criminal Law*, i. 456.

You don't know what you are doing!' Fitzjames shouted to the warders to put him back; discovered by patient hearing that the man was meaning to refer to some circumstance in extenuation, and after calling the witnesses found that the statement was confirmed. 'Now, you silly fellow,' he said, 'if you had pleaded "not guilty," as I told you, all this would have come out. It is true that I did not know what I was doing, but it was your own fault.' He then reduced the sentence to nine months, saying, 'Does that satisfy you?' 'Thank you, my Lord,' replied the man, 'that's quite right,' and left the court quite cheerfully. Fitzjames was touched by the man's confidence in a judge, and by his accurate knowledge of the proper legal tariff of punishment. Fitzjames was scrupulously anxious in other ways not to wrest the law, even if unsatisfactory in itself, out of dislike to the immediate offender. One instance is given by the curious case of the Queen *v.* Ashwell (in 1885). A man had borrowed a shilling from another, who gave him a sovereign by mistake. The borrower discovered the mistake an hour afterwards, and appropriated the sovereign. Morally, no doubt, he was as dishonest as a thief. But the question arose whether he was in strict law guilty of larceny. Fitzjames delivered an elaborate judgment to show that upon the accepted precedents of law, he was not guilty, inasmuch as the original act of taking was innocent.

Another aspect of justice, upon which Fitzjames dwells in his books, was represented in his practice. A judge, according to him, is not simply a logic machine working out intellectual problems, but is the organ of the moral indignation of mankind. When, after a studiously fair inquiry, a man had been proved to be a scoundrel, he became the proper object of wrath and of the punishment by which such wrath is gratified. Fitzjames undeniably hated brutality,

and especially mean brutality ; he thought that gross cruelty to women and children should be suppressed by the lash, or, if necessary, by the gallows. His sentences, I am told, were not more severe than those of other judges : though mention is made of one case in early days in which he was thought to be too hard upon a ruffian who, on coming out of gaol, had robbed a little child of a sixpence. But his mode of passing sentence showed that his hatred of brutality included hatred of brutes. He did not affect to be reluctant to do his duty. He did not explain that he was acting for the real good of the prisoner, or apologise for being himself an erring mortal. He showed rather the stern satisfaction of a man suppressing a noxious human reptile. Thus, though he carefully avoided anything savouring of the theatrical, the downright simplicity with which he delivered sentence showed the strength of his feeling. He never preached to the convicts, but spoke in plain words of their atrocities. The most impressive sentence I ever heard, says one of his sons, was one upon a wife-murderer at Norwich, when he rigidly confined himself to pointing out the facts and the conclusiveness of the evidence. Another man was convicted at Manchester of an attempt to murder his wife. He had stabbed her several times in the neck, but happened to miss a fatal spot ; and he cross-examined her very brutally on the trial. Fitzjames, in delivering sentence, told him that a man who had done the same thing, but with better aim, 'stood at the last assizes where you now stand, before the judge who is now sentencing you. The sentence upon him was that he should be hanged by the neck till he was dead, and he was hanged by the neck till he was dead.' The words emphatically pronounced produced a dead silence, with sobs from the women in court. It was, he proceeded, by a mere accident that the result of the prisoner's crime was

different, and that, therefore, the gravest sentence was the only proper sentence; and that is 'that you be kept in penal servitude for the term of your natural life.' This again was spoken with extreme earnestness: and the 'life' sounded like a blow. There was a scream from the women, and the prisoner dropped to the ground as if he had been actually struck. Fitzjames spoke as if he were present at the crime, and uttering the feelings roused by the ferocious treatment of a helpless woman.

Some of his letters record his sense of painful responsibility when the question arose as to reprieving a prisoner. He mentions a case in which he had practically had to decide in favour of carrying out a capital sentence. 'For a week before,' he writes, 'I had the horrible feeling of watching the man sinking, and knowing that I had only to hold out my hand to save his life. I felt as if I could see his face and hear him say, "Let me live; I am only thirty-five; see what a strong, vigorous, active fellow I am, with perhaps fifty years before me: must I die?" and I mentally answered, Yes, you must. I had no real doubts and I feel no remorse; but it was a very horrible feeling—all the worse because when one has a strong theoretical opinion in favour of capital punishment one is naturally afraid of being unduly hard upon a particular wretch to whom it is one's lot to apply the theory.' On another occasion he describes a consultation upon a similar case with Sir W. Harcourt, then Home Secretary. Both of them felt painfully the contrast with their old free conversations, and discussed the matter with the punctilious ceremony corresponding to the painfulness of the occasion. There was something, as they were conscious, incongruous in settling a question of life and death in a talk between two old friends.

I must briefly mention two such cases which happened

to excite public attention. On July 27 and 28, 1887, a man named Lipski was tried for a most brutal murder and convicted. His attorney wrote a pamphlet disputing the sufficiency of the evidence.[1] Fitzjames was trying a difficult patent case which took up the next fortnight (August 1 to 13). He saw the attorney on Monday, the 8th, and passed that evening and the next morning in writing his opinion to the Home Secretary (Mr. H. Matthews). On Thursday he had another interview with the attorney and a thorough discussion of the whole matter with Mr. Matthews. Some points had not been properly brought out on the trial; but the inquiry only strengthened the effect of the evidence. Mr. Matthews decided not to interfere, and Fitzjames went to stay with Froude at Salcombe on the Saturday. Meanwhile articles full of gross misstatements had appeared in certain newspapers. Fitzjames himself reflected that his occupation with the patent case had perhaps prevented his giving a full consideration to the case, and that an immediate execution of the sentence would at least have an appearance of undue haste. He therefore telegraphed to suggest a week's respite, though he felt that the action might look like yielding to the bullying of a journalist. Mr. Matthews had independently granted a respite upon a statement that a new piece of evidence could be produced. Fitzjames returned on the Monday, and spent a great part of the week in reading through all the papers, re-examining a witness, and holding consultations with Mr. Matthews. The newspapers were still writing, and 100 members of Parliament signed a request for a commutation of the sentence. After the most careful consideration, however, Fitzjames could entertain no reasonable doubt of the rightness of the verdict, and Mr. Matthews agreed with

[1] Fitzjames kept a journal for a short time at this period, which gives the facts, also noticed in his letters.

him. A petition from three jurors was sent in upon Sunday, the 21st, but did not alter the case. Finally, upon the same afternoon, Lipski confessed his guilt and the sentence was executed next day. 'I hope and believe that I have kept the right path,' writes Fitzjames, 'but it has been a most dreadful affair.' 'I hardly ever remember so infamous and horrible a story.' He was proportionally relieved when it was proved that he had acted rightly.

The other case, for obvious reasons, must be mentioned as briefly as possible. On August 7, 1889, Mrs. Maybrick was convicted of the murder of her husband. The sentence was afterwards commuted with Fitzjames's approval, and, I believe, at his suggestion, to penal servitude for life, upon the ground, as publicly stated, that although there was no doubt that she had administered poison, it was possible that her husband had died from other causes. A great deal of feeling was aroused: Fitzjames was bitterly attacked in the press, and received many anonymous letters full of the vilest abuse. Hatred of women generally, and jealousy of the counsel for the defence were among the causes of his infamous conduct suggested by these judicious correspondents. I, of course, have nothing to say upon these points, nor would I say anything which would have any bearing upon the correctness of the verdict. But as attacks were made in public organs upon his behaviour as judge, I think it right to say that they were absolutely without foundation. His letters show that he felt the responsibility deeply; and that he kept his mind open till the last. From other evidence I have not the least doubt that his humanity and impartiality were as conspicuous in this as in other cases, and I believe were not impugned by any competent witnesses, even by those who might doubt the correctness of the verdict.

Fitzjames's powers were such as naturally gave him unsurpassed authority with juries in criminal cases. A distinguished advocate was about to defend a prisoner upon two similar counts before Fitzjames and another eminent judge. The man was really guilty: but, said the counsel, and his prediction was verified, I shall obtain a verdict of 'not guilty' before the other judge, but not before Stephen. In civil cases, I am told that an impartial estimate of his merits would require more qualification. The aversion to technicality and over-subtlety, to which I have so often referred, appears to have limited his powers. He did not enjoy for its own sake the process of finding a clue through a labyrinth of refined distinctions, and would have preferred a short cut to what seemed to him the substantial merits of the case. He might, for example, regard with some impatience the necessity of interpreting the precise meaning of some clause in a legal document which had been signed by the parties concerned as a matter of routine, without their attention being drawn to the ambiguities latent in their agreement. His experience had not made him familiar with the details of commercial business, and he had to acquire the necessary information rather against the grain. To be a really great lawyer in the more technical sense, a man must, I take it, have a mind full of such knowledge, and feel pleasure in exercising the dialectical faculty by which it is applied to new cases. In that direction Fitzjames was probably surpassed by some of his brethren; and he contributed nothing of importance to the elaboration of the more technical parts of the law. I find, however, that his critics are agreed in ascribing to him with remarkable unanimity the virtue of 'open-mindedness.' His trenchant way of laying down his conclusions might give the impression that they corresponded to rooted preju-

dices. Such prejudices might of course intrude themselves unconsciously into his mind, as they intrude into the minds of most of us. But no one could be more anxious for fair play in argument as in conduct. He would give up a view shown to be erroneous with a readiness which often seemed surprising in so sturdy a combatant. He spared no pains in acquiring whatever was relevant to a case; whether knowledge of unfamiliar facts or of legal niceties and previous judicial decisions. Though his mind was not stored with great masses of cases, he never grudged the labour of a long investigation. He aimed at seeing the case as a whole; and bringing out distinctly the vital issues and their relation to broad principles. He used to put the issues before the jury as distinctly as possible, and was then indifferent to their decision. In a criminal case he would have been inexpressibly shocked by a wrongful conviction, and would have felt that he had failed in his duty if a conviction had not taken place when the evidence was sufficient. In a civil case, he felt that he had done his work when he had secured fair play by a proper presentation of the question to the jury. His mastery of the laws of evidence would give weight to his opinion upon facts; though how far he might be open to the charge of cutting too summarily knots which might have been untied by more dexterity and a loving handling of legal niceties, is a question upon which I cannot venture to speak positively.

I will only venture to refer to two judgments, which may be read with interest even by the unprofessional, as vigorous pieces of argument and lucid summaries of fact. One is the case (1880) of the 'Attorney-General *v.* the Edison Telephone Company,'[1] in which the question arose whether a telephonic message was a telegram. If so,

[1] *Law Reports*, 6 *Queen's Bench Division*, pp. 244–263.

the Company were infringing the act which gave to the Post Office the monopoly of transmitting telegrams. It was argued that the telephone transmitted the voice itself, not a mere signal. Fitzjames pointed out that it might be possible to hear both the voice transmitted through the air and the sound produced by the vibrations of the wire. Could the two sounds, separated by an interval, be one sound? The legal point becomes almost metaphysical. On this and other grounds Fitzjames decided that a telephone was a kind of telegraph, and the decision has not been disturbed. The other case was that of the Queen *v.* Price,[1] tried at Cardiff in 1883. William Price, who called himself a Druid, was an old gentleman of singularly picturesque appearance who had burnt the body of his child in conformity, I presume, with what he took to be the rites of the Druids. He was charged with misdemeanour. Fitzjames gave a careful summary of the law relating to burials which includes some curious history. He concluded that there was no positive law against burning bodies, unless the mode of burning produced a nuisance. The general principle, therefore, applied that nothing should be a crime which was not distinctly forbidden by law. The prisoner was acquitted, and the decision has sanctioned the present practice of cremation. Fitzjames, as I gather from letters, was much interested in the quaint old Druid, and was gratified by his escape from the law.

IV. MISCELLANEOUS OCCUPATIONS

I have now described the most important labours which Fitzjames undertook after his appointment to a judgeship. Every minute of the first six years (1879–85)

[1] *Law Reports*, 12 *Queen's Bench Division*, pp. 247–256.

might seem to have been provided with ample occupation. Even during this period, however, he made time for a few short excursions into other matters, and though after 1885 he undertook no heavy task, he was often planning the execution of the old projects, and now and then uttering his opinions through the accustomed channels. He was also carrying on a correspondence, some of which has been kindly shown to me. The correspondence with Lord Lytton continued, though it naturally slackened during Lytton's stay in England, from 1880 to 1887. It revived, though not so full and elaborate as of old, when, in 1887, Lytton became ambassador at Paris. Fitzjames's old friend, Grant Duff, was Governor of Madras from 1881 to 1886, and during that period especially, Fitzjames wrote very fully to Lady Grant Duff, who was also a correspondent both before and afterwards. If I had thought it desirable to publish any number of these or the earlier letters, I might have easily swelled this book to twice or three times its size. That is one good reason for abstaining. Other reasons are suggested by the nature of the letters themselves. They are written with the utmost frankness, generally poured out at full speed in intervals of business or some spare moments of his so-called vacation. They made no pretensions to literary form, and approach much more to discursive conversations than to anything that suggests deliberate composition. Much of them, of course, is concerned with private matters which it would be improper to publish. A large part, again, discusses in an unguarded fashion the same questions of which he had spoken more deliberately in his books. There is no difference in the substance, and I have thought it only fair to him to take his own published version of his opinions, using his letters here and there where they incidentally make his views clearer or

qualify sharp phrases used in controversy. I have, however, derived certain impressions from the letters of this period and from the miscellaneous articles of the same time; which I shall endeavour to describe before saying what remains to be said of his own personal history.

One general remark is suggested by a perusal of the letters. Fitzjames says frequently and emphatically that he had had one of the happiest of lives. In the last letter of his which I have seen, written, indeed, when writing had become difficult for him, he says that he is 'as happy as any man can be,' and had nothing to complain of—except, indeed, his illegible handwriting. This is only a repetition of previous statements at every period of his life. When he speaks of the twenty-five years of long struggle, which had enabled him to rise from the bar to the bench, he adds that they were most happy years, and that he only wishes that they could come over again. It is difficult, of course, to compare our lot with that of our neighbours. We can imagine ourselves surrounded by their circumstances, but we cannot so easily adopt their feelings. Fitzjames very possibly made an erroneous estimate of the pains and pleasures which require sensibilities unlike his own; and conversely it must be remembered that he took delight in what would to many men be a weariness of the flesh. The obviously sincere belief, however, in his own happiness proves at least one thing. He was thoroughly contented with his own position. He was never brooding over vexations, or dreaming of what might have been. Could he have been asked by Providence at any time, Where shall I place you? his answer would almost always have been, Here. He gives, indeed, admirable reasons for being satisfied. He had superabundant health and strength, he scarcely knew what it was to be tired, though he seemed always to be courting fatigue, or, if tired, he was only tired

enough to enjoy the speedy reaction. His affections had a strength fully proportioned to his vigour of mind and body; his domestic happiness was perfect; and he had a small circle of friends both appreciative and most warmly appreciated. Finally, if the outside world was far from being all that he could wish, it was at least superabundantly full of interest. Though indifferent to many matters which occupy men of different temperament, he had quite enough not only to keep his mind actively engaged, but to suggest indefinite horizons of future inquiry of intense interest. He was in no danger of being bored or suffering from a famine of work. Under such conditions, he could not help being happy.

Yet Fitzjames's most decided convictions would have suited a thorough-going pessimist. Neither Swift nor Carlyle could have gone much beyond him in condemning the actual state of the political or religious condition of the world. Things, on the whole, were in many directions going from bad to worse. The optimist is apt to regard these views as wicked, and I do not know whether it will be considered as an aggravation or an extenuation of his offence that, holding such opinions, Fitzjames could be steadily cheerful. I simply state the fact. His freedom from the constitutional infirmities which embittered both the great men I have mentioned, and his incomparably happier domestic circumstances, partly account for the difference. But, moreover, it was an essential part of his character to despise all whining. There was no variety of person with whom he had less sympathy than the pessimist whose lamentations suggest a disordered liver. He would have fully accepted the doctrine upon which Mr. Herbert Spencer has insisted, that it is a duty to be happy. Moreover, the way to be happy was to work. Work, I might almost say, was his religion. 'Be strong and of a

good courage' was the ultimate moral which he drew from doubts and difficulties. Everything round you may be in a hideous mess and jumble. That cannot be helped: take hold of your tools manfully; set to work upon the job that lies next to your hand, and so long as you are working well and vigorously, you will not be troubled with the vapours. Be content with being yourself, and leave the results to fate. Sometimes with his odd facility for turning outwards the ugliest side of his opinions, he would call this selfishness. It is a kind of selfishness which, if everyone practised it, would not be such a bad thing.

I must mention, though briefly, certain writings which represent his views upon religious matters: I have sufficiently indicated his position, which was never materially changed. His thoughts ran in the old grooves, though perhaps with a rather clearer perception of their direction. In June 1884 he published an article upon the 'Unknown and the Unknowable' in the 'Nineteenth Century,' declaring that Mr. Herbert Spencer's 'Unknowable' and Mr. Harrison's 'Humanity' were mere shadowy figments. 'Religion,' he maintains, will not survive theology. To this, however, he adds, with rather surprising calmness, that morality will survive religion. If the Agnostics and Positivists triumph, it will be transformed, not abolished. The Christian admiration for self-sacrifice, indeed, and the Christian mysticism will disappear, and it will turn out that the respectable man of the world and the lukewarm believer were after all in the right. Considering his own dislike to the mystic and the priestly view of things, this might almost seem to imply a reconciliation with the sceptics. He observes, indeed, in a letter that there is really little difference between himself and Mr. Harrison, except in Mr. Harrison's more enthusiastic view of human nature. But he confesses also that the article has given

pleasure to his enemies and pain to his friends. Though his opinions, in short, are sceptical, the consequences seem to him so disagreeable that he has no desire to insist upon them. In fact, he wrote little more upon these topics. He was, indeed, afterwards roused to utterance by an ingenious attempt of Mr. Mivart to show a coincidence between full submission to the authority of the Catholic Church and an equal acceptance of the authority of reason. In a couple of articles in the 'Nineteenth Century' (October 1887 and January 1888), he argued with his old vigour that Mr. Mivart was in fact proposing to put a match in a powder barrel and expect half to explode and the other half to remain unaffected. This was his last encounter upon the old question of authority. In the same year (April and May 1888) he wrote two articles upon a book by which he was singularly interested, Professor Max Müller's 'Science of Thought'; he expounds Professor Max Müller's philology in the tone of an ardent disciple, but makes his own application to philosophy. I do not suppose that the teacher would accept all the deductions of his follower. Fitzjames, in fact, found in the 'Science of Thought' a scientific exposition of the nominalism which he had more or less consciously accepted from Hobbes or Horne Tooke. Max Müller, he says, in a letter, has been knocking out the bottom of all speculative theology and philosophy. Thought and language, as he understands his teacher to maintain, are identical. Now language is made up of about 120 roots combined in various ways. The words supposed to express more abstract conceptions, some of them highly important in theology, are mere metaphors founded upon previous metaphors, twisted and changed in meaning from century to century. Nothing remains but an almost absolute scepticism, for on such terms no certainty can be obtained. In a letter he states that the only

problems which we can really solve are those of space and number; that even astronomy involves assumptions to which there are 'unanswerable objections'; that what is loosely called science, Darwinism, for example, is 'dubious in the extreme'; that theology and politics are so conjectural as to be practically worthless; and judicial and historical evidence little more than a makeshift. In short, his doctrine is 'scepticism directed more particularly against modern science and philosophy.' I do not take these hasty utterances as expressing a settled state of opinion. I only quote them as vehement expressions of an instinctive tendency. His strong conviction of the fallacies and immoralities of the old theological dogmatism was combined with an equally strong conviction of the necessity of some embodiment of the religious instincts and of the impotence of the scientific dogmatism to supply it. He therefore was led to a peculiar version of the not uncommon device of meeting the sceptic by a more thorough-going scepticism. It is peculiar because he scorned to take the further step of accepting a dogmatic belief on sceptical grounds; but it certainly left him in a position of which silence was, if I may say so, the only obvious expression of his feeling.

One curious illustration of his feelings is given by an utterance at the beginning of this period. Nobody had less tendency to indulge in versification. When a man has anything to say, he observes to Lord Lytton on one occasion, as an excuse for not criticising his friend adequately, 'I am always tempted to ask why he cannot say it in plain prose.' I find now that he once wrote some lines on circuit, putting a judgment into rhyme, and that they were read with applause at a dinner before the judges. They have disappeared; but I can quote part of his only other attempt at poetry. Tennyson's poem called

'Despair' had just appeared in the 'Nineteenth Century' for November 1881. The hero, it will be remembered, maddened by sermons about hell and by 'know-nothing' literature, throws himself into the sea with his wife and is saved by his preacher. The rescuer only receives curses instead of thanks. Fitzjames supplies the preacher's retort.[1] I give a part; omitting a few lines which, I think, verged too much on the personal:—

So you're minded to curse me, are you, for not having let you be,
And for taking the trouble to pull you out when your wife was drowned in the sea?
I'm inclined to think you are right—there was not much sense in it;
But there was no time to think—the thing was done in a minute.
You had not gone very far in; you had fainted where you were found,
You're the sort of fellow that likes to drown with his toe on the ground.
However, you turn upon me and my creed with all sorts of abuse,
As if any preaching of mine could possibly be of use
To a man who refused to see what sort of a world he had got
To live in and make the best of, whether he liked it or not.
I am not sure what you mean; you seem to mean to say
That believing in hell you were happy, but that one unfortunate day
You found out you knew nothing about it, whereby the troubles of life
Became at once too heavy to bear for yourself and your wife.
That sounds silly; so, perhaps, you may mean that all is wrong all round,
My creed and the know-nothing books, and that truth is not to be found—
That's sillier still: for, if so, the know-nothing books are right,
And you're a mere spiritless cur who can neither run nor fight,
Too great a coward to live and too great a coward to die,
Fit for nothing at all but just to sit down and cry.

. . . . . .

Why, man, we're all in one boat, as everyone can see,
Bishops, and priests, and deacons, and poor little ranters like me.
There's hell in the Church of England and hell in the Church of Rome,
And in all other Christian Churches, abroad as well as at home.
The part of my creed you dislike may be too stern for you,
Many brave men believe it—aye, and enjoy life, too.
The know-nothing books may alarm you; but many a better man
Knows he knows nothing and says so, and lives the best life he can.
If there is a future state, face its hopes and terrors gravely;
The best path to it must be to bear life's burthens bravely.
And even if there be none, why should you not live like a man,
Enjoying whatever you have as much and as long as you can?

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[1] The verses were published in the *St. James's Gazette* of Dec. 2, 1881.

In the world in which we are living there's plenty to do and to know;
And there's always something to hope for till it's time for us to go.
'Despair' is the vilest of words, unfit to be said or thought,
Whether there is a God and a future state or not.
If you really are such a wretch, that you're quite unfit to live,
And ask my advice, I'll give you the best that I have to give:
Drown yourself by all means; I was wrong and you were right.
I'll not pull you out any more; but be sure you drown yourself quite.

'Despair is the vilest of words.' That expresses Fitzjames's whole belief and character. Faiths may be shaken and dogmas fade into meaningless jumbles of words: science may be unable to supply any firm ground for conduct. Still we can quit ourselves like men. From doubt and darkness he can still draw the practical conclusion, 'Be strong and of a good courage.' And, therefore, Fitzjames could not be a pessimist in the proper sense; for the true pessimist is one who despairs of the universe. Such a man can only preach resignation to inevitable evil, and his best hope is extinction. Sir Alfred Lyall's fine poem describes the Hindoo ascetic sitting by the bank of the sacred stream and watching the legions as they pass while cannon roar and bayonets gleam. To him they are disturbing phantoms, and he longs for the time when they will flicker away like the smoke of the guns on the windswept hill. He meanwhile sits 'musing and fasting and hoping to die.' Fitzjames is the precise antithesis: his heart was with the trampling legions, and for the ascetic he might feel pity, but certainly neither sympathy nor respect. He goes out of his way more than once to declare that he sees nothing sublime in Buddhism. 'Nirvana,' he says in a letter, 'always appeared to me to be at bottom a cowardly ideal. For my part I like far better the Carlyle or Calvinist notion of the world as a mysterious hall of doom, in which one must do one's fated part to the uttermost, acting and hoping for the best and trusting' that somehow or other our admiration of the 'noblest human qualities' will be justi-

fied. He had thus an instinctive dislike not only for Buddhism, but for the strain of similar sentiment in ascetic versions of Christianity. He had a great respect for Mohammedanism, and remarks that of all religious ceremonies at which he had been present, those which had most impressed him had been a great Mohammedan feast in India and the service in a simple Scottish kirk. There, as I interpret him, worshippers seem to be in the immediate presence of the awful and invisible Power which rules the universe; and without condescending to blind themselves by delusive symbols and images and incense and priestly magic, stand face to face with the inscrutable mystery. The old Puritanism comes out in a new form. The Calvinist creed, he says in 'Liberty, Equality, Fraternity,' was the 'grain on which the bravest, hardiest, and most vigorous race of men that ever trod the earth were nourished.' That creed, stripped of its scholastic formulas, was sufficient nourishment for him. He sympathises with it wherever he meets it. He is fond of quoting even a rough blackguard, one Azy Smith, who, on being summoned to surrender to a policeman, replied by sentencing 'Give up' to a fate which may be left to the imagination. Fitzjames applied the sentiment to the British Empire in India. He was curiously impressed, too, by some verses which he found in an Australian newspaper and was afterwards given to quoting. They turned out to be written by Adam Lindsay Gordon (the 'Sick Stockrider').

> I have had my share of pastime, and I've done my share of toil,
> And life is short—the longest life a span.
> I care not now to tarry for the corn or for the oil,
> Or for the wine that maketh glad the heart of man;
> For good undone and time misspent and resolutions vain
> 'Tis somewhat late to trouble—this I know;
> I would live the same life over if I had to live again
> And the chances are I go where most men go.

I am perfectly well aware of the comments which that

statement may suggest. The orthodox may, if they please, draw a moral for their own tastes; and I could draw a moral which is not quite orthodox. I only say that I have tried to describe his final position in the matter, without reserve; and that, in my opinion, whatever else it shows, it reveals both the sincerity and the manliness of a man who dared to look facts in the face.

I must speak, though briefly, of his political sympathies in this period, for they were exceedingly deep and strong. His position as a judge gave him the solace of an employment which could divert his mind from annoying reflections. It may be held that it should also have restrained him more completely than it did from taking any part in party controversies. I confess that to be my own opinion. He felt that he ought to keep within limits; but I cannot help thinking that they might have been a little closer than he would quite acknowledge. The old journalistic impulse, however, stirred within him when he saw certain political moves, and he found it impossible quite to keep silence. The first occasion of his writing was upon the starting of the 'St. James's Gazette,' under the editorship of his old friend Mr. Greenwood. Both personal and political sympathy induced him, as he put it, 'to take Mr. Greenwood's shilling,' and I believe that he also enlisted Maine. Besides the poem which I have quoted, he wrote a good many articles upon legal and literary topics from 1881 to 1883, and some which came very close to contemporary politics. The doctrine may be pretty well summed up in the phrase which he quotes more than once—*Δῆμος ψηφίζων μεγάλην ἄρχην διαλύσει.* I need not follow the applications which he indicates both to Indian matters and to Mr. Gladstone's Irish policy.

He ceased to contribute after the beginning of 1883, but he wrote occasional letters under his own name to

the 'Times.' The chief of these (I believe that there were others) were reprinted, and attracted some notice. In 1883 a question arose in which he had a special interest. In passing the Criminal Procedure Bill he had accepted what was described as a compromise. Magistrates were to receive powers of dealing summarily in trifling cases with Europeans who had previously had a right to be tried by juries before the High Courts. Fitzjames accepted the proposal that the power should be entrusted only to magistrates of European birth. The 'Ilbert Bill,' in 1883, proposed to remove this restriction, and so to confer a right of imprisoning Europeans for three months upon native magistrates, of whom there were now a greater number. Fitzjames, whose name had been mentioned in the controversy, wrote very earnestly against this proposal.[1] He asserted the right of Englishmen to be tried by magistrates who could understand their ways of thought, and approved the remark that if we were to remove all anomalies from India, our first step should be to remove ourselves. This, however, was, to his mind, only one example of the intrusion of an evil principle. A more serious case occurred upon Mr. Gladstone's introduction of the first Home Rule Bill in 1886. Fitzjames wrote some elaborate letters upon the 'Irish Question,' when the measure was anticipated, and wrote again upon the bill when the debates upon Mr. Gladstone's proposals were in progress.[2] The letters begin by disavowing any 'party politics'—a phrase which he does not consider to exclude an emphatic expression of opinion both upon Home Rule and upon the Land Legislation. It is entirely superfluous to summarise arguments which have been repeated till

[1] His letters appeared in the *Times* of March 1 and 2 and June 9, 1883, and were afterwards collected.

[2] His letters appeared on January 1, 4, and 21, and on April 29 and May 1, 1886.

nobody can want to hear more of them. Briefly, I may say that Fitzjames's teaching might be summarised by saying that Ireland ought to be governed like India—justly, and in any case firmly. The demands both for Home Rule and for land legislation are, according to him, simply corollaries from the general principles of Jacobinism and Socialism. The empire will be destroyed and the landlords will be plundered. Virtually we are dealing with a simple attempt at confiscation supported by an organised system of crime. The argument is put with his usual downright force, and certainly shows no symptoms of any decline of intellectual vigour. He speaks, he says, impelled by the 'shame and horror' which an Englishman must feel at our feebleness, and asks whether we are cowards to be kicked with impunity? Sometimes he hoped, though his hopes were not sanguine, that a point would yet be reached at which Englishmen would be roused and would show their old qualities. But as a rule he turned, as his letters show, from the contemplation of modern politics with simple disgust. He is glad that he is, for the time at least, behind a safe breakwater, but no one can say how much longer it will withstand the advancing deluge.

Three months' rest after the attack of 1885 enabled him to go the summer circuit, and during the latter part of the year he was recovering strength. He became so much better that he was, perhaps, encouraged to neglect desirable precautions, and early in 1886 he writes that he has been able to dismiss from his mind a passing fear which had been vaguely present, that he might have to resign. In the following September, Mr. W. H. Smith requested him to become chairman of a Commission to inquire into the Ordnance Department. What he learnt in that capacity strengthened his conviction as to the essential

weakness of our administrative system; although the rumours of corruption, to which, I believe, the Commission was owing, were disproved. He made, however, such suggestions as seemed practicable under the circumstances. While the Commission lasted he presided three days a week, and sat as judge upon the other three. He felt himself so competent to do his duties as to confirm his belief that he had completely recovered. He did a certain amount of literary work after this. He made one more attempt to produce a second edition of the 'View of the Criminal Law.' Indeed, the title-page gives that name to his performance. Once more, however, he found it impossible to refrain from re-writing. The so-called second edition is more properly an abbreviated version of the 'History,' though the reports of trials still keep their place; and, as the whole forms only one moderately thick volume, it represents much less labour than its predecessors. It includes, however, the result of some later inquiries and of his judicial experience. He abandons, for example, an opinion which he had previously maintained in favour of a Court of Appeal in criminal cases, and is now satisfied with the existing system. In this shape it is virtually a handbook for students, forming an accompaniment to the 'Digest' and the 'History.' It was the last of his works upon legal topics.

Meanwhile, if he wrote little, he was still reading a great variety of books, and was deeply interested in them. His letters are full of references to various authors, old and new. His criticisms have the primary merits of frankness and independence. He says exactly what he feels, not what the critics tell him that he ought to feel. No criticism can be really valuable which does not fulfil those conditions. I must admit, however, that a collection of his remarks would include a good many observations rather

startling to believers in the conventional judgments. Purely literary qualities impress him very little unless they are associated with some serious purpose. He shows the same sort of independence which enabled him to accept a solitary position in religious and political matters. In private letters, moreover, he does not think it necessary to insist upon the fact, which he would have fully admitted, that the great object of criticism is always the critic himself. A man who says that he can't see, generally proves that he is blind, not that there is no light. If only for this reason, I would not quote phrases which would sound unduly crude or even arrogant when taken as absolute judgments, instead of being, as they often are, confessions of indifference in the form of condemnations. When a great writer really appeals to him, he shows no want of enthusiasm. During the enforced rest in 1885 he studied Spanish with great zeal; he calls it a 'glorious language,' and had the proverbial reward of being enabled to read 'Don Quixote' in the original. 'Don Quixote,' he says, had always attracted him, even in the translations, to a degree for which he cannot quite account. His explanation, however, is apparently adequate, and certainly characteristic. He sees in Cervantes a man of noble and really chivalrous nature, who looks kindly upon the extravagance which caricatures his own qualities, but also sees clearly that the highest morality is that which is in conformity with plain reason and common sense. Beneath the ridicule of the romances there is the strongest sympathy with all that is really noble.

After Spanish and Cervantes, Fitzjames turned to Italian and Dante. Dante, too, roused his enthusiasm, and he observes, quaintly enough, that he means to be as familiar with the 'Divina Commedia' as he once was with Bentham—two authors rarely brought into contact. Dante

conquered him the more effectually by entering over the ruins of Milton. Some years before he had pronounced the 'Paradise Lost' to be 'poor, contradictory, broken-down stuff, so far as the story goes.' He inferred that 'poetry was too slight an affair to grapple with such an awful subject.' He had, however, already read Dante in Cary's translation, and thereby recognised something far greater. When he came to the original he was profoundly impressed. It is strange, he says, that he has learnt for the first time at the age of sixty what a really great poem could be. Poor Milton's adaptation of pagan mythology to the Hebrew legends, in order to expound Puritan theology, results in a series of solecisms, which even the poet could not expect his readers to take seriously. The story, taken for history, certainly breaks down sufficiently to justify a severe remark. But Dante's poem, embodying a consistent imagery into which was worked the whole contemporary philosophy and theology, is of absorbing interest even to those who are comparatively indifferent to its more purely literary merits. Fitzjames does not make any detailed criticisms, but fittingly expresses his astonishment and admiration upon Dante's revelation of a new world of imagination. I think that it is possible to show fitting reverence for Dante without deposing Milton from his much lower, though still very lofty place. But to one brought up in the old English traditions it was difficult to avoid the rather superfluous contrast.

With the help of such studies and frequent visits to old friends, and minor literary tasks, Fitzjames could find ample means of filling up any spaces left by his judicial duties. In spite of the disgust with which he regarded the political world, he was happy in his own little world; and his time passed in a peaceful round of satisfactory work. A few troublesome cases, those especially of which

I have spoken, gave him occasional worry; but he could adhere to his principle of never fretting unnecessarily. But now was to begin the painful experience which comes to the survivors when the ranks begin to thin. He felt such losses deeply, if with little display of feeling. I find a remark in one of his letters which is, I think, characteristic. He says that his first feeling upon a severe blow had been something like shame at not suffering more. But in a few weeks the sense of loss had become deeper and stronger; and he had to remind himself of the necessity of conquering his depression. I have no need, I hope, to dwell upon the strength of his affections. I can never forget one occasion when his sympathies were deeply stirred; and when his sense of a certain awkwardness in expressing himself, a relic of his old prejudice against 'sentimentalism,' served only to bring out most pathetically the power of the emotions with which he was struggling.

Two severe losses marked the year 1888. Maine died on February 3. The old friendship had lost none of its warmth; and Fitzjames had frequently enjoyed visits to the lodge at Trinity Hall, where Maine, as master, presided over the Christmas gatherings. Fitzjames commemorated his friend by an article in the 'Saturday Review.'[1] In a warm eulogy, he praises the 'clearness and sobriety of Maine's generalisations as well as their intrinsic probability,' and declares that the books were written 'as if by inspiration.' Maine, he says, was equally brilliant as a journalist, as a statesman, and as a thinker. Fitzjames speaks, though a little restrained by his usual reserve, of the 'brotherly intimacy of forty years, never interrupted

[1] February 11, 1888; reprinted in the biographical notice by Sir M. E. Grant Duff, prefixed to the collection of Maine's speeches and minutes in 1892.

by a passing cloud'; and ends by saying that there are 'persons to whom the world can never have the same aspect again as when Maine lived in it.' It had been a great pleasure, I may add, that he had been able to appoint one of his friend's sons, who died soon after the father, to a clerkship of assize on the South Wales circuit.

In the autumn Maine was followed by Venables. Fitzjames paid an annual visit to the house where Venables lived with his brother at Llysdinam, on the border of Radnorshire. He often mentions in his letters the filial affection with which he regarded Venables. In the previous year (1887) he had an opportunity of expressing this more directly than usual. One of Venables' friends, Mr. Pember, had suggested that they might show their affection by presenting a stained glass window to a church which Venables had built. Fitzjames took up the plan warmly, and with the help of a few other friends carried out the scheme. When it was made known to Venables, who of course was much gratified, Fitzjames wrote to him a letter (August 1, 1887) of which I quote the important part. 'I found your letter on my return from the country this morning. You are quite right in thinking that I did say a great deal less than I meant. I feel shy in putting into quite plain words what I feel about you; but I do not like such things to prevent me from saying just once that I like you, honour you, and respect and admire you more than almost any man I ever knew. For nearer forty than thirty years you have been to me a sort of spiritual and intellectual uncle or elder brother, and my feelings about you have constantly grown and strengthened as my own experience of men and books has ripened and deepened and brought me into closer and closer sympathy with you and more complete conscious agreement with all your

opinions and sentiments. I can recall none of your words and writings which I have not cordially approved of, and I shall always feel deeply grateful to Mrs. Lyster Venables (Venables' sister-in-law), for whom also I feel the warmest friendship, and to Pember for suggesting to me a way of showing my feelings about you, which would never have occurred to a person so abundantly gifted with clumsy shyness as myself. However, I do not believe you will like me the worse for having the greatest possible difficulty in writing to any man such a letter as this.'

The three lights of the window, representing Moses, Aaron, and Joshua, were intended as portraits of Venables and his two brothers. Beneath was the inscription suggested by Mr. Pember, 'Conditori hujus ecclesiæ amicissimi quidam.' Fitzjames adds that he had felt 'a passing wish' to add his favourite words, 'Be strong and of a good courage,' which, at his suggestion, Dean Stanley had taken as the text for a funeral sermon upon Lord Lawrence. I will only add that Fitzjames had said in private letters substantially what he said to Venables himself. On October 8, 1888, he heard of his old friend's death, and again wrote an article of warm appreciation in the 'Saturday Review.'

V. JAMES KENNETH STEPHEN

I have now to give a brief notice of events which had a saddening influence upon the later years. Fitzjames, as I have remarked, had seen comparatively little of his elder children in their infancy. As they grew up, however, they had been fully admitted to his intimacy and treated on the footing of trusted and reasonable friends. The two younger daughters had been playthings in their infancy, and grew up in an atmosphere of warm domestic

affection. Just before Venables' death Fitzjames made a little tour in the West of Ireland with his daughter Rosamond, who has preserved a little account of it. I shall only say that it proves that she had a delightful travelling companion; and that his straightforward ways enabled him to be on the friendliest terms with the natives whom he encountered. Among the frequent declarations of the happiness of his life, he constantly observes that one main condition was that his children had never given him a moment's uneasiness. Two, indeed, had died in infancy; and Frances, a very promising girl, had died of rheumatic fever July 27, 1880. Such troubles, however deeply felt, cannot permanently lessen the happiness of a healthy and energetic life. His three sons grew into manhood; they all became barristers, and had all acted at different times as his marshals. I shall say nothing of the survivors; but I must speak briefly of the one who died before his father.

James Kenneth Stephen was born on February 25, 1859.[1] His second name commemorates his father's friendship for his godfather, Kenneth Macaulay. He was a healthy lad, big and strong, and soon showed much intellectual promise. He was at the school of Mr. William Browning at Thorpe Mandeville; and in 1871 won a foundation scholarship at Eton, where he became the pupil of Mr. Oscar Browning, the brother of his former master. He already gave promise of unusual physical strength, and of the good looks which in later years resulted from the singular combination of power and sweetness in his

[1] I have used a notice in the *Cambridge Review* of February 11, 1892, and some notes by Mr. Oscar Browning. I have also to thank several of James's friends for communications; especially Mr. Cornish, now Vice-Provost of Eton College, Mr. Lowry, now an Eton master, Mr. Reginald J. Smith, Q.C., and Mr. H. F. Wilson, of Lincoln's Inn.

features. The head of his division was H. C. Goodhart, afterwards Professor of Latin at the University of Edinburgh.[1] Other boys in the division were George Curzon and Cecil Spring Rice. James was surpassed in scholarship by several of his friends, but enjoyed a high reputation for talent among his cleverest contemporaries. The school, it appears, was not quite so much absorbed by the worship of athletics as was sometimes imagined. James, however, rowed for two years in the boats, while his weight and strength made him especially formidable at the peculiar Eton game of football 'at the wall.' The collegers, when supported by his prowess, had the rare glory of defeating the Oppidans twice in succession. He was ever afterwards fond of dilating with humorous enthusiasm upon the merits of that game, and delighted in getting up an eleven of old Etonians to play his successors in the school. He was, however, more remarkable for intellectual achievements. With Mr. Spring Rice and another friend he wrote the 'Etonian,' which lasted from May 1875 to August 1876; and several of the little poems which he then wrote were collected afterwards in his 'Lapsus Calami.'[2] They are, of course, chiefly in the humorous vein, but they show sufficiently that Eton was to him very different from what it had been to his father. He was a thoroughly loyal and even enthusiastic Etonian; he satirises a caviller by putting into his mouth the abominable sentiment—

> Ye bigot spires, ye Tory towers,
> That crown the watery lea,
> Where grateful science still adores
> The aristocracy.

---

[1] I deeply regret to say that Professor Goodhart died while these pages were going through the press. The schoolboy affection had been maintained to the end; and Goodhart was one of James's most intimate and valued friends.

[2] Mr. Lowry mentions some other ephemeral writings, the *Salt Hill Papers* and the *Sugar Loaf Papers*.

His genuine feeling is given in the lines on 'My old School':—

> And if sometimes I've laughed in my rhymes at Eton,
> Whose glory I never could jeopardise,
> Yet I'd never a joy that I could not sweeten,
> Or a sorrow I could not exorcise,
>
> By the thought of my school and the brood that's bred there,
> Her bright boy faces and keen young life;
> And the manly stress of the hours that sped there,
> And the stirring pulse of her daily strife.

To the last he cherished the memory of the school, and carefully maintained his connection with it. One odd incident occurred in 1875, when James got up a 'constitutional opposition' to the intrusion of the revivalist preachers Moody and Sankey. His father wrote him a judicial letter of advice, approving his action so long as it was kept within due limits. He takes occasion to draw the moral that the whole power of such people depends upon the badness of their hearers' consciences. A man who has nothing to hide, who is 'just, benevolent, temperate and brave,' can 'look at things coolly and rate such people at their value.' Those 'few words' (i.e. the names of the virtues) 'are the summary of all that is worth having in life. Never forget any one of them for one moment, though you need not talk about them any more than you talk about your watch.' James had a marked influence in the college; he was a leading orator in the school debating societies; and his good sayings were as familiarly quoted as those of Sydney Smith or Luttrell in the larger world. Mr. Cornish, who was his tutor for a time, tells me of the charm of James's talk with his elders, and says that, although he was careless on some matters upon which schoolmasters set a high value, he always showed power and originality. He won an English Essay prize in 1875, the History prize in 1876 and 1877, the Declamation prize

in 1878, and was one of the 'select' for the Newcastle in 1877.

James went to King's with a scholarship in 1878. He gave up classics and took to history. He took a first class (bracketed first in the class) in the historical tripos, but was only in the second class in the law tripos. Besides prizes for college essays, he won the 'Member's Prize' for an essay upon Bolingbroke in 1880, and the Whewell Scholarship for International Law in 1881. He succeeded in every competition for which he really exerted himself; although, like his father, he was rather indifferent to the regular course of academical instruction. Among his contemporaries, however, he enjoyed the kind of fame which is perhaps of still better augury for future success. King's College in his day, says Mr. Browning, was only emerging slowly from the effects of its close dependence upon Eton. It had been in former days chiefly a little clique of older schoolboys. James helped much to change this, and distinctly raised the intellectual tone of the place. He was a well-known speaker at the Union, of which he was president in 1882. He was an 'Apostle' too; and in May 1881 his father visited him in Cambridge, and attended a meeting of the Society where James read a paper. Although, therefore, he scarcely won such a share of academical honours as might have been expected, James was regarded by his friends as the man of his time who was most definitely marked out for distinction in later years. His friends, indeed, were innumerable; and from all with whom I have communicated there is a unanimous testimony not only to his intellectual promise, but to his influence in promoting a high tone of thought and feeling. His father's letters frequently refer to him. James, he says, is a 'splendid young fellow'; he will surpass his father in due

time, and be the fourth distinguished man of his name. James, he says once, using the epithet which in his mouth conveyed the highest praise, is a 'sturdier' fellow in many ways than I was, and writes better than I could at his age. One achievement of the son rather extorted than attracted his father's praise. He appeared in a Greek play as Ajax, a part for which his massive frame and generally noble appearance fitted him admirably. The father admitted that he had a certain dislike to a man's exhibiting himself personally, but was reconciled by observing that James acted more like a gentleman amusing himself than like a professional performer.

How far these anticipations of success would ever have been fulfilled must remain uncertain. James may not have had his father's extraordinary vigour, but he undoubtedly had one quality in which his father was defective. He had a surprising facility in making friendly alliances with all sorts and conditions of men. His opinions partly resembled his father's. In politics he was of the Conservative tendency, and he was certainly not of the orthodox persuasion in theology. But he was equally at ease with Tories and Home Rulers, Roman Catholics and Agnostics; and his cheery, cordial manners put him at once on the best understanding with everybody. There was something contagious in the enthusiasm of a young man who seemed so heartily to appreciate the simple joy of living. Perhaps his weakness was to be a little too versatile in his sympathies and interests.

After taking his degree, James spent some time in Germany and France. He was elected to a fellowship at King's College in 1885, and as a candidate wrote dissertations upon 'Political Science' and 'International Law.'[1] He was elected, it is said, as much upon the strength of his general ability as for any special performance.

[1] The last was published at the end of 1884.

He was called to the bar in 1884, and naturally employed his spare time upon journalism. He wrote a good deal for Mr. Greenwood in the 'St. James's Gazette,' and had extraordinary facility as a writer. Mr. Reginald Smith tells me how James once wrote a leading article in the train between Paddington and Maidenhead. Many of the little poems which he contributed to periodicals were improvised. He was famous for wit and readiness as an after-dinner speaker; and showed an oratorical power in electioneering speeches which gave the highest hopes of parliamentary success. Indeed, from all that I have heard, I think that his powers in this direction made the greatest impression upon his friends, and convinced them that if he could once obtain an opening, he would make a conspicuous mark in public life.

At the end of 1886 he had an accident, the effects of which were far more serious than appeared at the time. He was staying at Felixstowe, and while looking (December 29, 1886) at an engine employed in pumping water he received a terrible blow upon the head. He returned to his work before long, but it was noticed that for some time he seemed to have lost his usual ease in composition. He was supposed, however, to have recovered completely from the effects of the blow. In the early part of 1888 he astonished his friends by producing a small weekly paper called the 'Reflector.' It appeared from January 1 to April 21, 1888. He received help from many friends, but wrote the chief part of it himself. The articles show the versatility of his interests, and include many thoughtful discussions of politics and politicians, besides excursions into literature. Perhaps its most remarkable quality was not favourable to success. It was singularly candid and moderate in tone, and obviously the work of a thoughtful observer. Probably the only chance of success for such a

periodical would have been to make a scandal by personality or impropriety. To expect a commercial success from a paper which relied only upon being well written was chimerical, unless the author could have afforded to hold out in a financial sense for a much longer period. The expense gave a sufficient reason for discontinuing it; and it is now, I fear, to be inferred that the venture was one of the first signs of a want of intellectual balance.

Meanwhile, it seemed to indicate that James had literary tastes which would interfere with his devotion to the bar. Some months later (June 1888) his father appointed him to the clerkship of assize on the South Wales circuit, which had become vacant by the death of Maine's son.

He now took comparatively little interest in his profession and spoke of taking more exclusively to literature. Clearer symptoms showed themselves before long of the disease caused by the accident. I have no wish to dwell upon that painful topic. It is necessary, however, to say that it gradually became manifest that he was suffering from a terrible disease. He had painful periods of excitement and depression. Eccentricities of behaviour caused growing anxiety to his family; and especially to his father, whose own health was beginning to suffer from independent causes. I will only say that exquisitely painful as the position necessarily was to all who loved him, there was something strangely pathetic in his whole behaviour. It happened that I saw him very frequently at the time; and I had the best reasons for remarking that, under all the distressing incidents, the old most lovable nature remained absolutely unaffected. No one could be a more charming companion, not only to his contemporaries but to his elders and to children, for whose amusement he had a special gift. He would reason in the frankest and most good-humoured way about himself and his own affairs,

and no excitement prevented him for a moment from being courteous and affectionate.

He resolved at last to settle at Cambridge in his own college in October 1890; resigning his clerkship at the same time. At Cambridge he was known to everyone, and speedily made himself beloved both in the University and the town. He spoke at the Union and gave lectures, which were generally admired. And here, too, in 1891 he published two little volumes of verse: 'Lapsus Calami' and 'Quo Musa Tendis?' Four editions of the first were published between April and August.[1] It started with an address to Calverley, most felicitous of minor poets of Cambridge; and the most skilful practisers of the art thought that James had inherited a considerable share of his predecessor's gift. I, however, cannot criticise. No one can doubt that the playful verses and the touches of genuine feeling show a very marked literary talent, if not true poetic power. He seems, I may remark, to have had a special affinity for Browning, whom he parodied in a way which really implied admiration. He took occasion to make a graceful apology in some verses upon Browning's death.[2] But to me the little volume and its successor speak more of the bright and affectionate nature which it indicates, and the delight, veiled by comic humour, in his friendships and in all the school and college associations endeared by his friends' society. The 'Quo Musa Tendis?' composed chiefly of poems contributed to various papers in the interval, appeared in September 1891.

Mr. Oscar Browning quotes some phrases from one of James's letters in November, which dwell with lively anticipation upon the coming term. For a time, in fact, he

[1] A bibliographical account of the changes in these editions is given in the fourth.

[2] A 'Parodist's Apology,' added in the later edition of the *Lapsus*.

seemed to be in excellent spirits and enjoying his old pursuits and amusements. But a change in his condition soon occurred. He had to leave Cambridge at the end of November; and he died on February 3, 1892. Many bright hopes were buried with him; but those who loved him best may find some solace in the thought that few men have been so surrounded by the affection of their fellows, or have had, in spite of the last sad troubles, so joyous or so blameless a life.

James's college friends have put up a brass to his memory in King's College Chapel. His family erected a fountain near Anaverna. His father added a drinking-cup as his own special gift, and took the first draught from it October 25, 1892, when about to take his final leave of the place.

VI. CONCLUSION

What remains to be told of Fitzjames's life shall be given as briefly as may be. The death of James had been preceded by the death of Lord Lytton, November 24, 1891, which was felt deeply by the survivor. His own health gave fresh cause for anxiety during the latter part of 1889, though happily he had little suffering at any time beyond some incidental inconvenience. On March 17, 1890, he had an attack of illness during the assizes at Exeter resembling that which he had previously had at Derby. He was again ordered to rest for three months. Sir A. Clark allowed him to go on circuit in the summer. Lord Coleridge was his colleague, and Fitzjames enjoyed his society. He afterwards went to Anaverna, and, though unable to walk far, took much pleasure in long drives. Meanwhile it began to be noticed that his mind was less powerful than it had hitherto been. It was an effort to him to collect his thoughts and conduct a case clearly. A competent observer stated as his general view that Fitzjames was at intervals no longer what he had

been—a remarkably strong judge—but that he could still discharge his duties in a way which would have caused no unfavourable comments had he been new to the work. Remarks, however, began to be made in the press which may have been more or less exaggerated. I need only say that Fitzjames himself was quite unconscious of any inability to do his duty, and for some time heard nothing of any comments. In March 1891 he was on circuit at Exeter again with Lord Coleridge. It was thought right that certain public remarks should be brought under his notice. He immediately took the obviously right course. He consulted Sir Andrew Clark, who advised resignation. Fitzjames did his last work as judge at Bristol, March 15 to 23, and finally resigned on April 7, 1891, when he took leave of his colleagues at an impressive meeting. The Attorney-General, Sir R. Webster, expressed the feelings of the bar; and the final 'God bless you all,' with which he took leave of the members of his old profession, remains in the memory of his hearers. He was created a baronet in recognition of his services, and received the usual pension.

I may here mention that he was elected a corresponding member of the 'Institut de France' in 1888 ('Académie des Sciences morales et politiques'). The election, I believe, was due to M. de Franqueville, the distinguished French jurist, with whom he had formed a warm friendship in later years. He also received the honorary degree of LL.D. from the University of Edinburgh in 1884, and was an honorary member of the American Academy of Arts and Sciences.

After his retirement his health fluctuated. He visited Froude at Salcombe in June, and was able to enjoy sailing. He afterwards went to Homburg, and in the autumn was able to walk as well as drive about Anaverna. He wrote an article or two for the 'Nineteenth Century,'

and he afterwards amused himself by collecting the articles of which I have already spoken, published in three small volumes (in 1892) as 'Horæ Sabbaticæ.' On the whole, however, he was gradually declining. The intellect was becoming eclipsed, and he was less and less able to leave his chair. Early in 1893 he became finally unable to walk up and down stairs, and in the summer it was decided not to go to Anaverna. He was moved to Red House Park, Ipswich, in May, where he remained to the end. It had the advantage of a pleasant garden, which he could enjoy during fine weather. During this period he still preserved his love of books, and was constantly either reading or listening to readers. His friends felt painfully that he was no longer quite with them in mind. Yet it was touching to notice how scrupulously he tried, even when the effort had become painful, to receive visitors with all due courtesy, and still more to observe how his face lighted up with a tender smile whenever he received some little attention from those dearest to him. It is needless to say that of such loving care there was no lack. I shall only mention one trifling incident, which concerned me personally. I had been to see him at Ipswich. He was chiefly employed with a book, and though he said a few words, I felt doubtful whether he fully recognised my presence. I was just stepping into a carriage on my departure when I became aware that he was following me to the door leaning upon his wife's arm. Once more his face was beaming with the old hearty affection, and once more he grasped my hand with the old characteristic vigour, and begged me to give his love to my wife. It was our last greeting.

I can say nothing of the intercourse with those still nearer to him. He had no serious suffering. He became weaker and died peacefully at Ipswich, March 11, 1894.

He was buried at Kensal Green in the presence of a few friends, and laid by the side of his father and mother and the four children who had gone before him. One other grave is close by, the grave of one not allied to him by blood, but whom he loved with a brotherly affection that shall never be forgotten by one survivor.

I have now told my story, and I leave reflections mainly to my readers. One thing I shall venture to say. In writing these pages I have occasionally felt regret—regret that so much power should have been used so lavishly as to disappoint the hopes of a long life, for I always looked to my brother as to a tower of strength, calculated to outlast such comparative weaklings as myself; and regret, too, that so much power was expended upon comparatively ephemeral objects or upon aims destined to fail of complete fulfilment. Such regrets enable me to understand why the work which he did in India made so deep an impression upon his mind. And yet I feel that the regrets are unworthy of him. The cases are rare indeed where a man's abilities have been directed precisely into the right channel from early life. Almost all men have to acknowledge that they have spent a great portion of their energy upon tasks which have led to nothing, or led only to experience of failure. A man who has succeeded in giving clear utterance to the thoughts that were in him need care comparatively little whether they have been concentrated in some great book or diffused through a number of miscellaneous articles. Fitzjames's various labours came to a focus in his labours upon the Criminal Law. During his short stay in India he succeeded in actually achieving a great work; and I hope that, if his hopes of achieving similar results in England were disappointed, he will have successors who will find some help from the foundations which he laid.

But, as he said of his father, the opportunity of directing your powers vigorously and in a worthy direction is its own reward. If to have taken advantage of such opportunities be the true test of success, whatever opinions may be held of you by others, and to whatever account they may turn your labours, Fitzjames may be called eminently successful. It often appears to me, indeed, that a man does good less by his writings or by the mark which he may make upon public affairs than by simply being himself. The impression made upon his contemporaries by a man of strong and noble character is something which cannot be precisely estimated, but which we often feel to be invaluable. The best justification of biography in general is that it may strengthen and diffuse that impression. That, at any rate, is the spirit in which I have written this book. I have sought to show my brother as he was. Little as he cared for popularity (and, indeed, he often rather rejected than courted it), I hope that there will not be wanting readers who will be attracted even by an indifference which is never too common. And there is one thing which, as I venture to believe, no one can deny, or deny to be worth considering. Whatever may be thought of Fitzjames's judgments of men and things, it must be granted that he may be called, in the emphatical and lofty sense of the word, a true man. In the dark and bewildering game of life he played his part with unfaltering courage and magnanimity. He was a man not only in masculine vigour of mind and body, but in the masculine strength of affection, which was animated and directed to work by strenuous moral convictions. If I have failed to show that, I have made a failure indeed; but I hope that I cannot have altogether failed to produce some likeness of a character so strongly marked and so well known to me from my earliest infancy.

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